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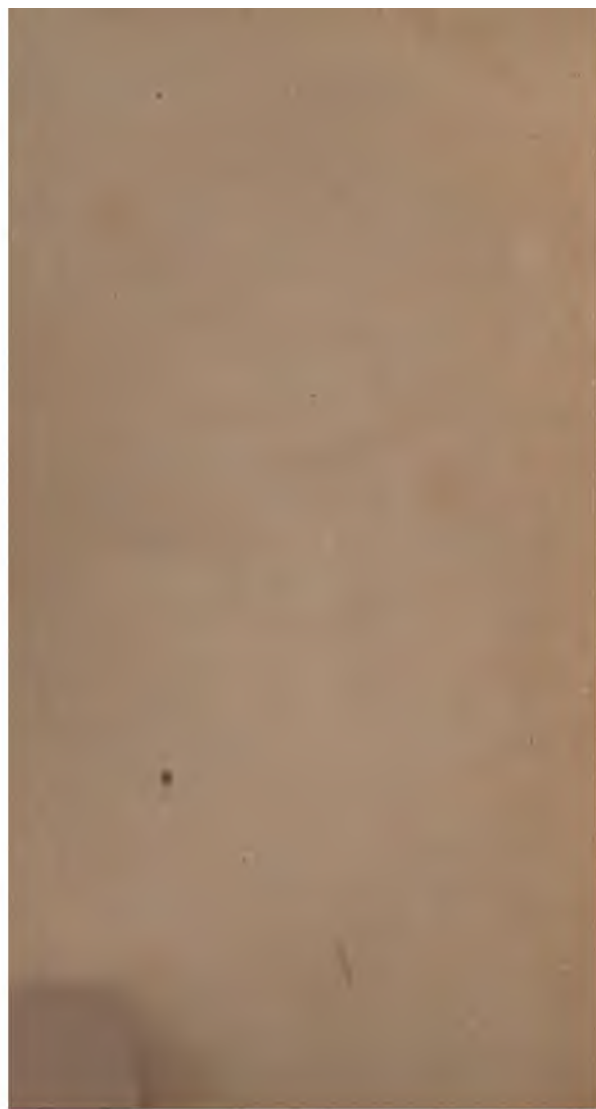
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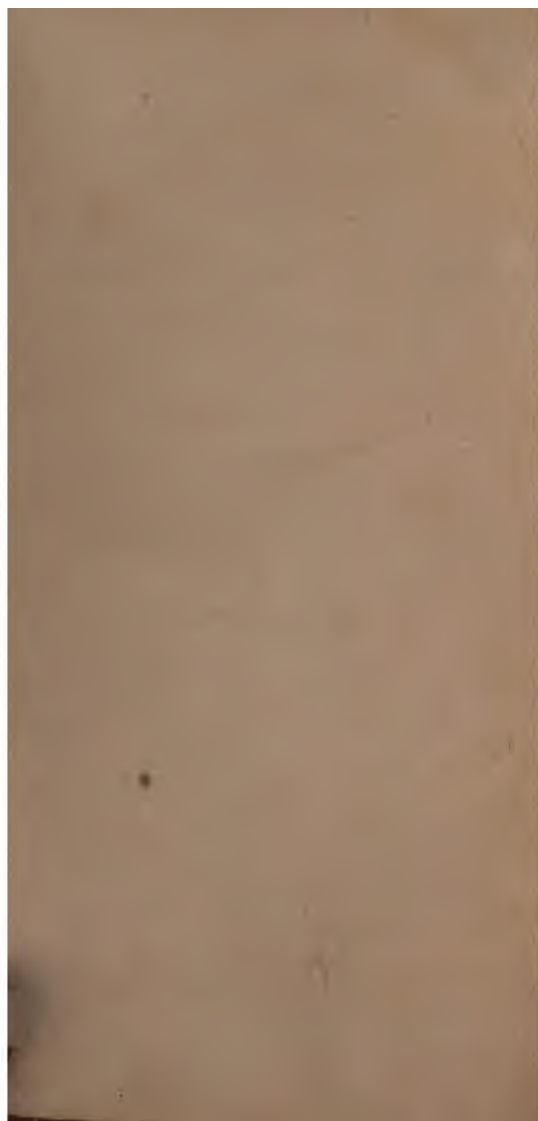
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THOUGHTS

ON THE

DEATH PENALTY.

SHOWING THAT IT IS

ATHEISTICAL IN DOCTRINE;

CONTRARY TO THE LAWS OF GOD AND THE
BIBLE; AND OPPOSED TO THE SPIRIT
OF CHRISTIANITY.

AND ALSO,

AN ESSAY ON PRISON DISCIPLINE.

BY W. Y. EMMET.

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PREFACE.

IN presenting these thoughts on the death penalty, and prison discipline, to my readers, I have sought only to discharge a duty devolving upon every individual member of society, who feels bound to contribute his mite toward the advancement of the interests of our common country. I have not attempted to do more than to supply my friends and the public with a brief argument, and facts whereon to reflect, until they are prepared to make up a correct decision relative to the propriety of abolishing this long established practice.

In so doing, I have yielded to the solicitation of numerous friends, who have at various times heard my oral lectures on this subject. And I have been induced to comply with that request the more willingly, from the fact, that there is no work on this side of this great controversy, in the western market; and that those which are published in the east, are too large and labored to meet the popular want, or too expensive to be within the reach of the

great mass of mind upon which I desire to operate; and in whose *will* is the state of reign.

In regard to the performance of the work I would simply say — lay I greater claim to *common* sense, than to literary talent, or to ical correctness in composition; and this has been performed, in the short interval which I could steal as it were from other pressing engagements. Asking your indulgence toward its imperfections, I commend its suggestions to your candor.

THE AUTHOR

THOUGHTS ON THE DEATH PENALTY.

INTRODUCTION.

LAW is a rule of action, prescribed and enforced upon moral beings by competent authority.

The Being who gave existence to his creatures for their felicity, and who knows with infallible certainty, on what their happiness depends, has a perfect right to enjoin that line of conduct which is essential to its perpetuation ; and to prohibit the contrary.

But even here, the basis of law, is seen in the fact, that the *happiness of the governed* is the predicate both of the gift of law, and of the subject's obligation of obedience. For if the enactment did not seek, but destroyed the happiness of the subject—then would it be *tyranny*, and it could impose no moral obligation to obedience. It is therefore the good which is to be promoted by it, that gives it its

legal character, and imposes the obligation of its obedience. Man was not only made for life, but for happiness, rational, moral happiness; and the giving of law to him should be a disciplinary matter; the great, and only sign of which should be, to teach and educate him in the principles of righteousness and peace. To lead him to discover his own rights, and the rights of others; that by the discovery of his own rights, the sense of duty to self may be inspired: and by the discovery of others rights, he may be led to discharge his duty to them. Thereby making him master of himself, and leading him to seek as the object of his actions, not only the advancement of his own good, but the good of others.

THE ORIGIN OF LAW.

The origin of all political law is founded on the intellectual and moral constitution of man.

God has created him for moral action and happiness. And to seek rational, *moral* happiness, is the great law of his higher, or *m*

nature. And to promote its acquisition is the legitimate object of all just legislation.

To lead him to this enjoyment, God has endowed him with certain *moral* faculties, as benevolence, veneration, and conscientiousness. And the exercise and gratification of these, is what constitutes his highest moral duty, and purest moral happiness.

What these instruments of happiness direct him to do, or forbid to be done, becomes the law of his moral nature. What they approve makes his happiness, and what they disapprove robs him of enjoyment.

From this it will be seen that the greatest possible good, and highest happiness of man, is the only object aimed at by his Creator, in giving him law. To lead him to this highest good, God has engraven this law of action upon his *moral* nature, and directed him to a knowledge of its Divine code, by the aspirations of his intellect. And pending the acquisition of this knowledge to the highest intellects, and to make its beneficent instructions available to the less favorably constituted, He has revealed the same principles in His written Law. And hence it is, that the teachings

of man's moral nature, and of God's written Law are in eternal harmony — and therefore, "they that are without the written law, are a law unto themselves," having the same law written on their moral natures by the finger of God.

He, therefore, who is called to legislate for the protection of himself and his fellow men, should study closely and carefully the constitution of *man* as a *moral* being; the organization of society, and the rights of both. He should not too blindly bind himself to the past. He should study the past for instruction, and from its errors draw lessons for future usefulness, and not forget that men are progressive beings.

If his veneration for *antiquity* is great, let him study the *infinitely* wise, and most antique laws of the great Lawgiver, and endeavor to conform his legislative enactments to His.

He must set himself for the support and defense of great and just principles — he must not be frightened by the cry of "sickly sentimentalism," and "morbid sympathy," or "false philanthropy;" he must not be deterred from duty by the cry of "infidelity" — because he would aid in carrying forward the great re-

forms of the age. The time has come for bold independent action of freemen ; it is high time we had thrown away the last relic of despotism, and directed our highest aims to *public, universal* good.

There are times when the assertion of great principles is the best service a man can render society. When the public mind is so excited by the political movements of European monarchies to perpetuate the unjustly usurped authority over the minds and bodily labors of men naturally free ; and while they are carrying forward their triumphs of iniquity, by the infliction of the "death penalty," on the best portion of their race ; exciting the citizens of this more happy land to disgust at their deeds of oppression, may be the proper time to bring the *unrighteousness* of the "death penalty" before the public attention anew, with the evidences of its impropriety, that it may be erased from our statutebooks.

We shall therefore proceed to present a few of the many prominent objections to the continuance of this barbarous practice.

THE DEATH PENALTY IS ATHEISTICAL IN DOCTRINE.

For when 'it is contended, that the citizen "has given up to the government a portion of his own individual rights, for the general good," the doctrine of this argument is, "I have the right to take my own life ; I owe no *obligation* to any one for its existence! I have the perfect right to do what I will with what is mine own.'

Is not this sentiment an atheistical one? Surely it is. For if I have this right, I owe God nor any one else *any* obligation for its possession. For if I do owe God, or any other being obligation for its possession, then I have not this right to dispose of it without the consent of him to whom I am indebted for its possession.

If this doctrine of right to dispose of my own life be denied, then I answer, the argument that the *government* has the right, *fails forever!* For if the *individual* had not this right himself, he could not dispose of it to the government by contract! And if not thus invested in the government, then its exercise by the government is *usurpation* and *tyranny*.

We deny man's right to make such contract. Man is endowed by his Creator with certain inalienable rights. Then he holds these *inalienable* rights, by a *tenure* which he cannot *alienate*, but must hold at the will and pleasure of the donor.

We also deny the existence of any such contract. Our constitutions declare "all rights not *specially* delegated are *reserved*." Let the contract be shown to exist, and then we will meet it. We deny that our fathers possessed this right, and therefore if they had made any such contract with the government, it would have been a wrong, a nullity. And therefore they could not have imposed on their posterity any obligation to submit to, or continue that wrong, even if it were found to exist in the constitutions of our country. But we ask, is it possible that American citizens, who declare the "right to *life inalienable*," have bartered it away? Where is the traitor? Have we *indeed* bartered away any of our rights? No! We have only vested government with power to protect, and preserve them inviolate. We have not attempted to surrender or barter away these rights which we have declared in-

alienable. Have we contracted away that life with which the Creator has invested us, as His gift, which He only may recall, at His pleasure? And that gift too, on which all other gifts, rights, and privileges depend? No! No!! It is preposterous. Then, "we have not 'voluntarily' consented to hold our lives, and the tenure of our earthly existence, at the discretion or caprice of a legislative majority, whose erratic legislation no man can calculate."

The object of establishing legal government is the preservation of all the rights of all over whom it is established, which are embraced in the enjoyment of LIFE. "Property may be diminished by the operation of government, and restored again. Liberty may be taken away for a time, and restored again. The wound inflicted may be healed, and the wrongs may be redressed, or atoned for! But life once taken by man, cannot be restored by man. And it is Atheistical presumption, to interfere with God's prerogative, to give and recall his gift.

We see by the foregoing remarks that the "death penalty" is contrary to the great first principles recognized in the Declaration of In-

dependence, which forms the basis of our Republican Government. For if "men are and of right ought to be (not only alive but) free," then no further interference with even their liberty, ought to be allowed by law, than what is absolutely necessary for the general good. For the only object of penal law is, or should be, to secure the general good ; not to gratify the violent passions of men. And in seeking the general good, it must not be overlooked that the criminal himself is an integral part of those whose good is to be sought. He is one of that society whose rights are to be protected inviolate. Criminal law, then, must consult the best good of the criminal himself, the best good of his family, or those with whom he is connected, as well as the other portions of society. Punishment in its very nature implies this. Punishment is not retaliation, nor revenge, nor cruelty ; butt he "infliction of pain or evil, with a view to the good of the offender."

This is a well established doctrine of political as well as of divine law. Seneca, the great ancient moralist, said " the end of all *correction* is the *amendment* of wicked men, or to prevent

the influence of evil example." Dymond quotes this from Seneca with approbation, and asks, "is it for his own advantage, or others, or both, that the offender is punished? Both! Primarily his own! We should feel toward the mentally diseased, as we do toward the physically diseased."

The great question to be settled is, what will best secure these ends of government? In answering this question, we shall first show that the "death penalty" *defeats* all these objects of penal legislation.

1st. It neither tends to, nor designs any good, to the victim of its destruction; and therefore violates his right to life, and protection in his rights, which it is the object of the law to secure to all the subjects, for whose good (his as well as others), laws are enacted. It not only *violates* all his rights, but *destroys* both them and him.

2d. It overlooks the good of his family, and violates and destroys many of their rights. For the law cannot discriminate between the vagabond worthless *murderer*, and the comparatively valuable man, who has by surrounding circumstances been led to commit this criminal out-

age on society, (perhaps the first of his otherwise useful life), if his guilt be clearly proved. Now if such be the circumstances of the murderer, if he is connected with a family who have in him the rights of support and protection, which he has always regarded, and to which he has devoted himself generally ; then you not only disregard their right to his assistance, but you violate these many rights of his family, as wickedly as he did the rights of those whom he has injured ; and perhaps with less provocation. If he would have done his duty toward those who were dependent on him, so far as their protection and assistance were concerned, had you not cut him off from the discharge of any and all these duties, who violates their rights most, him or the law ? We answer, the law which compels their violation !

His family are innocent members of society, and are therefore to have their rights protected by law, even if we should admit, which we do not), the right in government to violate the rights of criminals. And if the violation of the rights of these innocent members of society be a crime, then is the government

criminal in its violation of his family's right to his labor, assistance, and protection. And they cause him to violate his most sacred pledges to these duties, solemnly made in the face of high heaven; or rather, they violate these rights, and not him.

Again, it defeats the "security of society," which is one of the objects of law. If this be proven as a result of the death penalty, then we shall establish the fact of its *unlawfulness*. It destroys the security of society by making the conviction of the guilty uncertain. For when the indictment is for a capital offense, there is evidently a great reluctance in many of the most virtuous minds in community, to have any participation whatever in the affair. They therefore make up their minds from report of the case, or from conscientious scruples, not to serve as jurors. By this influence most of those who are really qualified to sit in important cases, are entirely excluded from our legal administration; and it is therefore left to be conducted by less competent individuals. Indeed, the light of truth, and the spirit of justice and mercy, has so diffused itself throughout society, that the administra-

f the law becomes continually more un-
n. And if the conviction fails, the crim-
s turned loose upon society, encouraged
s impunity to sink himself and associ-
nto deeper degradation, and to pursue
ays of crime with greater greediness.

operation tends to corrupt the commu-
and lead the best inclined citizens to the
ission of a crime which in some coun-
has also been punished with death.

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mony to cause the death of a fellow being
great, that notwithstanding the solemnity
ir oaths, they are in effect, rather than in
n, induced to perjure themselves.

e witness is called to the stand, and there
n to "tell the truth, the whole truth, and
ng but the truth, as he shall answer to

' But he has previously thought of the
ability of his testimony determining the
of the criminal, and he shudders at the
ght of being the cause of the death of
one, even of this "unfortunate wretch!"
nd so strong is his instinctive sense
he *inviolability* of human life, that he
fully conceals all that he possibly can

all that he has not too publicly disclose before. And also endeavors to give to the facts he is reluctantly compelled to reveal the most favorable coloring,—even a false one rather than the man should die. The juror too, is solemnly sworn to try the case according to “the Law and the testimony, as he shall answer to God.” But he thinks of answering to his own conscience *first*; he, therefore finding his “*moral sense*” opposed to the destruction of human life, is busily engaged in seeking a way to defeat the Law of its prey. And to aid him in the perjury of himself and the Court Officers, who are all sworn to execute the Law with fidelity, the Judge tells him, if he can find a loop on which to hang a *Doubt* he *may* “acquit.” The “loop” to hang the doubt upon, is now the all-absorbing thought with him; and if he can so far succeed in perjuring himself, as to decide against the Law—which he has sworn to decide *by*—he so rejoices in this victory of his conscientiousness, in relation to the death penalty, as to smother its voice against perjury. And all the benevolent in the community join in the

ph of humanity over the Tyranny of Law.

us, while the operation of this law makes conviction of the guilty *uncertain*, and the action of society *insecure*, it at the same time tends to destroy, in the public mind, the sacredness of legal oaths, and leads its administrators to *perjury*.

Can such results spring from just and equitable laws? Can such enactments be valid, if law is a rule of right action? No! such enactments should be repealed.

But it may be said, that if the reluctance of witnesses to testify, and of jurors to convict, when a life and death hang on the evidence, and a verdict does free many a guilty man, and send him back to the haunts of vice—there to grow deeper in depravity, and grow more fearfully adept in crime, when under a more cruel penal system, he might have been prevented from doing mischief, and have been brought back to the paths of usefulness and virtue; it is not the fault of the law, but of those who violate it, in its administration.

What the remedy therefore is to be found, not in relaxing the rigor of the Law, but in changing

the feeling and sentiment of those who are to enforce it; impressing them with a deep sense of their solemn obligation to administer the law truly and faithfully, as they have sworn to do; and of their guilt if they fail to do so and stain their souls with perjury. Instead of yielding to public sentiment, which virtue annuls the law, we should correct that sentiment, and endeavor to enlist it in the enforcement of the law.

This is Mr. Cheever's mode of correcting the great evil. "Throw away, (he says), all the absurd reasonings, and make the execution of the penalty of death for murder, absolutely *certain*, and its restraining power is immeasurable." But the question returns, how are we to make the execution of such a "penalty absolutely *certain*?" So long as men retain the feelings of *humanity*, and their natural horror of shedding human blood, the very source of the *sacredness* of human life, from which arises both their abhorrence of the crime and their shrinking from punishing it by the shedding of blood, it cannot be done; for the law's feeling is in proportion to their repugnance to the enormity of the crime. Therefore, we

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 eeper and turn men back to barbarity, and mal
 ister *revenge* the rule of their actions, you cann
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 unless both to the public safety, and the cause

justice and good morals, by adopting a code so severe as to tempt to the violation of oaths and official duty, in the very name of benevolence and regard for the community, if not of justice also. The greater the kind of "*pious perjury*," the more it holds out such a temptation to its compliance as shall give it, in the public regard, the semblance of a *virtue*. It is no objection, therefore, against the death penalty that it so often produces this effect; it results in the threefold evil, of giving nity to crime, lessening the respect of the community for the law and its administration, and greatly lowering the standard of morals.

The evil cannot be cured by homilies and duty of magistrates, jurors and witnesses, so long as penal law is needed to restrain murder; for the law must be administered by men as they are, imperfect and accountable to temptation; and while the general standard of morals is so low, that in the class who are subject to penal restraint, some are depraved enough to be murderers, there will be in the class who administer the law, many who are not

not say, few who *are*—firm enough always to sacrifice feeling to principle, under the excitement produced in a case of life and death. And the legislator must look at society as it is, and adapt his legislative action to its condition. It is most discreditable to any man, (says an English writer), invested with power, when the wheels turn round upon their governors and they say, ‘your laws are so cruel and so foolish that we cannot and will not act upon them.’” And evidence that this is the case, both in England and other countries, is abundant.

ESTIMONY OF BRITISH WRITERS.

Mr. Wakefield, who was long connected with Newgate Prison, says: “When I first entered Newgate, I had not a doubt of the efficacy of public executions as deterring from crime. By degrees, I came firmly to believe the contrary. Newgate is the very best place to form a sound opinion on the subject; that is, the opinion is deduced from the facts in the prison. The fear of death is so connected by self-interest and hope, which may be called forth to the

extent of delusion in nearly every man is so prone to believe in superior fortune, that he seldom, if expects to die on that occasion. Premature is almost the certain consequence drinking, yet when does the fear of itself operate as a sufficient motive to Just so in respect to hanging for a would be difficult to imagine more instances of the delusive hopes of life by the very fear of death, than are witnessed in the cells of Newgate estimating that in not more than one a hundred *after sentence* of death, and not one in a thousand *before* a capital criminal really expects capital ment," he adds, "that the numerous of escape, arising in a great part nature of the punishment, the calculation, reason, and the delusions of hope, fear, conspire to render capital punishment wholly inefficient for the sole end ment, viz: to prevent crime."

CERTAINTY BETTER THAN SEVERITY.

The familiar maxim, that certainty rather than severity, makes punishment efficacious, requires no proof, as it is not denied. Absolute certainty, of course, no human tribunal can attain in the infliction of any punishment; but unquestionably it can be more nearly reached in the case of milder ones, than of the more severe. The greater the suffering threatened by your law, the harder will it be to execute it; and, therefore, more is often lost, in the lessened probability of execution, than is gained in the increased terribleness of the penalty. Making the penal statute too severe, you rob it of its certainty, so that in effect, it loses its terrors, and becomes rather the offer of impunity to transgressors. This, doubtless, is one reason why torture as a punishment would do, as all allow, immeasurably more harm than good. Mens' souls would so revolt at its infliction, that often they would sooner clear the guilty than doom them to a fate so horrible.

TESTIMONY OF LAWYERS AND LE ISLATORS, ON THIS POINT.

Speaking of French juries, M. C. Lucas, eminent French jurist, says: "There is scarcely a list, at the present day, which does not contain men who experience a conscientious and almost invincible repugnance, to send one of their fellow beings to the scaffold."

"A statement made in the London Morning Herald, vol. 2, page 291, affords," says Mr. Burleigh, "a striking illustration of this truth. In 1832, an alteration in the penal law of France, empowered juries to state in their verdicts of guilty, that the crime was committed under extenuating circumstances. When this is done in capital cases, the punishment is commuted to a milder penalty. Now mark the result in 1834, the latest period to which the criminal return of France extended, when that is, *more than four-fifths* of the verdicts published in the Herald; one hundred and eleven out of one hundred and thirty-guilty in capital cases, had the qualifying clause in them, which saved the offender's

Herald adds, that six of the remaining y-five, received a commutation of the ament, so that only nineteen, or less than eventh of the whole number, suffered . A strong case occurred within a few is. A woman who, by cruel treatment, ered her step-child, two and a half years having broken its bones thirteen times, when they healed, at last resorted to starvation, was found guilty, with '*extenuating*' nstances." This shows how strong was epugnance to death penalties there.

English writer observes, that the opposi- of a severe penal system "to the best igs of the most virtuous men," produces iety of evils, among which is, its leading s to "look upon perjury as an ami- weakness, and even value themselves on t which shakes *purity* and *justice* to their center." O'Sullivan, in his able report to egislature of New York, remarks, "none have ever attended our criminal courts in al cases, can have failed to notice the op- on of the principle here referred to, in a ner the most subversive of the ends of ce, and the most dangerous to the securi-

ty of the community. None will question the truth here presented, and none can compute the number of criminals who have been let loose on society, free of all penalty, and emboldened and hardened by a first *impunity*, nor form any conception of the amount of evil which has had its origin in this cause, in casting upon the administration of the law an *uncertainty* in the last degree prejudicial to all the policy of penal justice."

Again, he remarks: "There can be no criminal lawyer in this state, of any extended practice or observation, by whom the remark, that the *uncertainty* of conviction for capital offenses has grown almost into a proverb, will not be received as a truism. Juries will always be powerfully swayed in judgment as well as feeling by the horror of shedding blood, which the laws of God have too deeply planted in the hearts of all to be eradicated, however it may be weakened by the influence of any laws of man. In the clearest cases it is constantly seen that they will not convict. They will violate their oaths under a thousand pleas of technical deficiencies or imperfections of evidence, however immaterial."

In a series of resolutions adopted by the common council of London, it is stated that some jurymen submit to fines rather than serve, where they think the punishment of death ought not to be inflicted; others acquit the guilty, or mitigate the offense, so as not to expose the criminal to death. And we know that this is the case all over our own country. Where is the man in this community who does not regard the law to fine men who refuse to violate their consciences, and the starving of juries into verdict, as the relic of a barbarous age, and as a disgrace to our statute books? Here, we may be told, that this law is not *enforced*. Well, we know it is not, and cannot be, without insulting the majesty of human rights; and, therefore, we contend it is not *law* at all, and ought to be "*expunged*" from the books, with all other barbarities of the dark age in which they originated.

A few years ago a petition was presented to the British Parliament from the foremen, and nearly every grandjurymen of the Old Bailey Court of that year, with about twelve hundred more, merchants and others, who had served or were liable to serve, as jurors. It prayed

for an amendment of the criminal law, testified that, in its present state, "juries extremely reluctant to convict where the consequences of the offense excite a conscientious horror on their minds, lest the performance of their duty should make them accessory to judicial murder. Hence, a most painful struggle was produced in their minds between the feelings of a just humanity with sense of the obligations of an oath. juries, also, are frequently reluctant to give testimony, lest they might bring upon their consciences the stain of human blood; thus criminals, who under a more rational code would meet with a punishment justly deserved for their crimes, escape with entire impunity. Lord Brougham, in presenting it, remarked "that it was worthy of their attention for the reasons *it contained*, but more especially on account of the authority of the petitioners who were so competent to speak of the feelings of jurors, as they who had felt scruples?"

The same year, a petition was presented from more than one thousand citizens of London, hundred and fourteen towns and cities,

that they find by experience that the in-
 n of death, or even the possibility of that
 ion, *prevents* the prosecution, conviction,
 punishment of the criminal, and they
 restly pray for that protection which they
 d derive from a more lenient law."

IS AND STATISTICS FROM OFFI- CIAL SOURCES.

writer in the Edinburgh Review, alluding
 ie former severity of the British laws
 ist forgery of banknotes, says: "They
 d have gone on until this day hanging by
 esale for that crime, if juries had not be-
 : weary of the continual butchery, and
 ved to acquit."

S. Taylor, an eminent British barrister, in
 rk published some years ago, states from
 al papers which were laid before parlia-
 t, that "during nine years, in which seven
 lred and eight persons were committed on
 ges of capital crimes, no less than three
 lred and thirty-four, nearly half, got off;
 le of five hundred and fifty-eight per-

sons committed on charges *not capital*, fifty-seven, or a little more than one-tenth got off."

The law of death for forgery, after having been repealed, was reënacted and remained nominally in force for two years; but "public opinion was so far respected," says the London Morning Herald, "that no execution took place under it."

Lord Holland, in an able protest against reënactment of that law, affirmed that "capital penalties rarely hinder the commission of crime, but prevent its detection."

Lord Suffield, in a speech in parliament in 1834, stated, that "the well-known reluctance to prosecute while the penalty continued capital, had prevented the *commitment* of a large proportion of criminals, who now no longer escape punishment on that account" (the death penalty being repealed); and that "in the next place, the proportion of *convicts* had increased," for those crimes which ceased to be punished with death. He then referred to the parliamentary returns, as showing, that "in every hundred persons committed for crimes no longer capital, the average

number convicted is *seventy-two*, the same proportion as in the aggregate of offenses not heretofore capital; while the average for those remaining capital, were only *forty-seven* in each hundred commitments—twenty-five escaping by acquittals produced by the severity of the law.” He declared that he “held in his hand five hundred and fifty-five perjured verdicts, delivered at the Old Bailey in fifteen years, beginning with 1814 and ending with 1829, for the single offense of stealing from dwellings, the value of the goods stolen being sworn to be above forty shillings (the amount to make them capital); but the verdicts being ‘to the value of thirty-nine shillings’ only. It deserves remark, that when the legislature raised the capital indictment to five pounds, in June, 1827, the juries raised their verdicts to four pounds nineteen shillings (thus keeping it one shilling below the price of the offender’s life), or low enough to save it.”

Some of the cases were like these: A woman was proved to have stolen a ten-pound note—that or nothing. The jury found her guilty of stealing *under forty shillings*. A man was convicted of stealing a pocketbook con-

taining banknotes to the amount of pounds, and drafts to the amount of ten pounds. The verdict was, "guilty of stealing thirty shillings." The same verdict was given in the case of a woman convicted of stealing (on her own confession) gold coins to the value of sixty-three shillings, and other money to the amount of forty-four.

These cases show clearly the fact, that men will commit the crime of perjury to spare themselves regarding it as a less crime to perjure themselves than to be guilty of shedding blood, or of committing *legalized murder*. The great reason is the innate consciousness of the sacredness of human life.

The London Morning Herald, commenting on an array of facts drawn from public documents, comes to this just conclusion, that if we look for a certain number of years, when the comparative number of executions and the number of acquittals for capital crimes diminished, the facility of conviction increased; and when the number of executions increased, the facility of conviction diminished. Here we have a proof, that shedding human blood is a great obstruction to the course of effective justice.

The same journal states on the authority of parliamentary returns, that in three years ending in 1833, out of two hundred and seventy-seven charged, only seventy-eight were convicted, being but twenty-eight per cent.; whereas on non-capital charges, the general average of convictions is seventy-three per cent.

In London and Middlesex, in 1827-8-9, for six offenses, all capital at that time, and for which forty-two persons were executed, the average convictions were fifty-seven out of every hundred committals. In 1830-1-2, when for three of the six, none were executed, and for the other three only five in all, the average convictions were sixty-two per cent. of committals. In 1833, when none of them were capital, the convictions were seventy-two per cent. of the committals. "This," adds the Herald, "accounts for the gradual *decrease* of those crimes which were once capital, but are so no longer. The cruel mode of punishment for shedding blood excited more sympathy for the offender than respect for the law." In 1827, ninety-one persons were committed in England and Wales

for forgery, then capital. Of these, forty-six were convicted. In 1833, when was not capital, ninety-one were committed and out of these sixty-two were convicted third more than in the former period.

AMERICAN EXPERIENCE.

William Bradford, Attorney General Pennsylvania, testified many years ago, "the experience of America does not contradict that of Europe." Among other proofs of this, he shows that when horse-stealing was capital in some of the States, "the unwillingness of witnesses to prosecute, the facility with which juries acquitted, and the prospect of pardon, created hopes of impunity which invited and multiplied the offense." *North American Review* for January, 1841, bears witness to the same difficulty of conviction, in capital cases, as still existing. "The reluctance to take life under any circumstances impels the jurors to avail themselves of slightest doubt, and the accused is acquitted though he has committed an unprovoked murder."

der, attended with circumstances of shocking barbarity."

The following statement of the number of prisoners tried in the Court of Oyer and Terminer for the City and County of Philadelphia, on the charges of murder, manslaughter, burglary, arson, and highway robbery, from 1795 to 1845, is carefully compiled, by the Clerk of the Court, from its records; acquittals and convictions being separately stated:

			Convictions.
Murder—1st degree,	-	-	10
" 2d degree,	-	-	29
Manslaughter,	-	-	38
Burglary,	-	-	256
Arson,	-	-	20
Rape,	-	-	7
Highway Robbery,	-	-	23
Total,			883
			Acquitted.
Murder—1st degree,	-	-	72
" 2d degree,	-	-	—
Manslaughter,	-	-	18
Burglary,	-	-	65
Arson,	-	-	31
Rape,	-	-	19
Highway Robbery,	-	-	23
Total,			228

Whence it appears that there were, in

Charges,	-	-	-	61
Convicted,	-	-	-	38
Acquitted,	-	-	-	22

Capital cases.

Charges,	-	-	111, or 18 per cent.
Convicted,	-	-	10, or 2 $\frac{2}{3}$ "
Acquitted,	-	-	72, or 31 $\frac{1}{2}$ "

Not Capital.

Charges,	-	-	500, or 81 per cent.
Convicted,	-	-	373, or 97 $\frac{1}{2}$ "
Acquitted,	-	-	156, or 68 $\frac{1}{2}$ "

"Showing that while, of all the charges, more than 18 per cent. were capital, and less than 82 per cent. were not; of all the convictions, less than 2 $\frac{2}{3}$ per cent. were capital, and more than 97 $\frac{1}{2}$ per cent. were not. And the acquittals on capital charges were to all the acquittals on charges not capital almost twice as many as the capital convictions were to all the convictions. Of 111, capital charges, only *ten* were capitally convicted, 72 were acquitted, and 29 were convicted on charges not capital. But of 500 charges not capital, 344 were convicted, and only 156 were acquitted. That is, while on capital charges only 9 per cent. were capitally convicted, on charges not capital 35 per cent. were convicted at all, and 65 per cent. were acquitted; the convictions on capital charges were to the convictions on charges not capital as 10 to 344, or 1 to 34.4.

not capital, were 68 and 4-5ths per cent., and the acquittals only 31 and 1-5th per cent."

We see clearly, from the facts shown from statistics gathered at home and abroad, the same effect of the death penalty, upon the administration of justice, and the security of the public from the commission of crime, that it defeats all the objects of wise legislation; that it turns the guilty loose upon community, hardened by the very uncertainty of punishment—growing out of its severity alone. O'Sullivan cites a case from 4th Dallas's Rep. which occurred in Philadelphia, of a boy who was tried for arson, then a capital crime, and acquitted; but being then tried for a misdemeanor, *on the same facts and evidence*, was found guilty." Proving that if the first charge had not involved his life, he would have been found guilty; but as it did, the jury perjured themselves rather than murder one so young, however clear the testimony of his guilt.

But this lenient disposition toward criminals, is not confined to any one part of civilized society, but to all parts of the world, where the knowledge of truth has shone; whether from the discovery of human rights, or the light of divine revelation.

Hence, this is not only the experience of England, France, Wales, &c., as well as of that part of our own country, to which we have referred in its own reports, but it is the experience of every State in this (ought to be) enlightened country.

See in proof, that jurors have acquitted, in all parts of our country, those whom public sentiment every where decided were guilty. Take, for example, the case of E. K. Avery, in Massachusetts; of young Robinson, in New York; Mercer, in New Jersey; Pearce, in Pennsylvania; and of Wyatt, who was convicted of killing a fellow-prisoner in Auburn State Prison, who, after his conviction, confessed a former murder, of which he had been acquitted by a jury, as "not guilty." Also, the confessions of the "noted *Buffalo Bill*," made on his death-bed, of his guilt of a murder of which he had been acquitted, as was also his associate, McLean, in the same offense. "Bill's" dying acknowledgment states their mutual guilt. Wyatt and McLean were both granted new trials,—because of the state of the public mind against the death penalty

ter they had been convicted,—and on the last trials both were acquitted.

From the facts in these cases it is seen that there was evidence enough to convict, and had not death been the penalty, they would have been retained in custody ; but as it was, they were turned loose on the community. Can a law be good and salutary, which makes the rights of community so *insecure*, and which imposes no restraints upon the vicious ? No ! and ought to be abolished, and more wholesome laws enacted in its place.

We may be told that the more terrible the penalty, the greater the restraint it imposes. But at this we have just shown, from the documents produced, not to be true ; and we might rather prove its *untruth* by showing that the fear of death is not the greatest restraint which can be imposed on men.

Does not patriotism—the love of country—serve the arm, and inspire the minds of men to meet death at the cannon's mouth, or at the executioner's altar ? Does not the fear of disgrace from the tyranny of public opinion often lead men to a duelist's end, or a suicide's grave ? Fear of death is not the most powerful restraint, but the *certainty*, rather than the

severity of a penalty, is that which makes it effective. And we have clearly shown that the death penalty makes the punishment of the law most uncertain ; for even when conviction is obtained, which is very difficult, because it exposes the life ; yet the execution is extremely doubtful, often resulting in the pardon of the guilty. For when the penalty is death, it will necessarily excite great sympathy for the criminal, especially if he have a family and circle of friends, who are to suffer deeply as well, and often more, than he upon whom the guilt of crime rests.

Again : the dread of sending a fellow-being to eternity "unprepared," often leads some minds to seek to acquit him, in hope that if his life is spared, he may, by more favorable circumstances than have surrounded him, be led to repentance and reformation of life, and to usefulness.

Thus we see that the death penalty does, in many ways, make the administration of justice *uncertain*, and the protection of community *insecure*, by excluding from the administration of our laws, those who are the best qualified to be the administrators of the government.

Men of tender consciences refuse to sit as jurors in capital cases, because they cannot consent to be parties to even *legal* manslaughter, while most others, who do sit, acquit through motives of mercy.

FACTS IN PROOF.

O'Sullivan states that in a case in New York, a few years ago, "before twelve jurors could be obtained, ten persons were excused on the ground of conscientious scruples against capital punishment in any case." At a trial in Chester, Pa., says Mr. Burleigh, seventeen of our most intelligent citizens avowed the same scruples.

On the trial of Howard, in Dover, N. H., "seven hundred persons were excused or set aside before a pannel was made up."

In Ohio, on the trial of Miss R., for *infanticide*, nearly three days were spent in getting a jury. Some were excused on conscientious scruples, and almost every one plead that they had heard the facts, and had "made up their minds on the case," until, finally, the Court, to fill the

panel, had to resort to the expedient of asking the juror "whether his opinion was so made up as to prevent him from giving an impartial verdict."

In the case of Shelby, of Kentucky, on his trial, the jury could not agree, and were discharged; six or eight of them, and the Judge, were hung in effigy. Afterward, in attempting his second trial, nearly every man in the county, who was competent to sit as a juror, was summoned; but the panel could not be filled.

In Kleim's case, in New York, after the panel was exhausted, it was necessary to summon talismen, and nearly a whole day was spent in filling up the jury. So in the case of Gordon, in Rhode Island. It was said that "not a man in the city of Providence would consent to sit on his trial."

ITS EVIL IS IRREMEDIAL.

When a man is slain, the evil is done, and we cannot recall it. Neither does the law of the death penalty seek to redress it. Does it

restitution to the bereaved family, or
 s of the murdered? No! Does it in any
 essen the evil which has been done to
 ? No! unless by *revenging their wrongs*
 ; *wrong* it does the murderer's family and
 s, be a redress. And if that is the object
 ; law, is it not a disgrace to this enlight-
 age? But we have been treating this
 t as if this was not the object of the law;
 least it is not the avowed one; though
 ink it fosters revengeful feelings in the
of community.

ENDANGERS THE LIVES OF THE INNOCENT.

ere are multiplied instances of *innocent*
 having suffered death wrongfully under
 operation of this law. Indeed, it is impos-
 always to avoid this result, only by abol-
 ; the practice; for cases will occur, in
 , to all human appearance, men will
 to be guilty, when they are not. And
 are on record, instances where men who

were *innocent*, have, under the operation of the law, been led to profess guilt.

Witness the case of the two Bournes', Vermont, who were convicted of the murder of their brother-in law, Colvin, by very strong circumstantial evidence. By the law of the State, one of them, who confessed a participation in the murder, had his sentence commuted to imprisonment for life. While the other, who still persisted in declaring his innocence, would have been hung in a few minutes more, had not the murdered Colvin returned just in time to save him. Colvin, it seemed, had gone off slyly or privately into New Jersey and circumstances led to the belief that the men had murdered him—and one confessed it; but Colvin having, by some means, found out their conviction, returned just as the executioner was about to adjust the fatal rope. While the crowd waited with breathless expectation, a cry was heard, "Stop! stop! for God's sake, stop!" when in rushed Colvin into the ring, who, being readily recognized as the murdered man, saved the life of the *innocent*.

Mrs. Child gives several cases in her "Letters from New York"—one a very strong

marked case—showing the utter impossibility of judging correctly from circumstances. A German who lived in a part of a house with a family who led a wretched life of riot and quarrel, was sitting with his back to the parties, peeling potatoes with his large knife, while they were engaged in a quarrel, which he did not understand, (as he did not know their language) when the woman, growing furious at her husband, jerked the knife out of the German's hand and plunged it into her husband's heart; who, when falling, was caught by the unsuspecting Dutchman, who drew out the bloody weapon, and remained holding the dying man in his arms, with the knife in his hand, while the murderess ran to the street door and hallooed "*murder*," to conceal her own guilt, when the neighbors ran in and seized the innocent German, and bore him off to prison. On the testimony of the murderess, and the circumstances, he was convicted and hung. And years after, the woman on her death-bed, confessed *her* guilt, and *his* innocence—when her repentance could not

reach him, whom she and the law has *unrighteously murdered*.

We might multiply cases from all parts of the world, were it necessary; but our object is only to show that while this law exists there will always be a liability to do injuries when done, can never be requited or redressed by the power which has inflicted them.

Mr. Chapin says, "it has been estimated that over one hundred innocent persons have suffered death in this manner, in the annals of English jurisprudence." And we may add, how many of the purest *patriotic* philanthropists* are under sentence of death.

While I write, who deserve a monument, rather than a *traitor's* grave! for the unrighteous laws of the same country which boasted enlightenment.

* The great agitators of Irish rights and liberties whose sentences disgrace the civilized world.

ITS INFLUENCE ON COMMUNITY IS DEMORALIZING.

The punishment of death," says a distinguished member of the French National Assembly, "can never compensate the infinite evil it causes in its general moral injury to character of all men."

The editor of the London Morning Herald, who has published more information on the subject of the influence of the death penalty, from various parts of the world, perhaps than any other publication, says: "Frequency of executions in any country is generally followed by a proportionate increase of crime, of violence, and blood. When the Legislature lightly estimates human life, the people are apt to devalue it."

And as an illustration of the truth of this remark, we quote from Dr. Dodd. "We constantly hear of crimes not less heinous than those for which the criminal suffers, being perpetrated at the place and at the very moment of an execution." The Doctor himself afterward committed a capital crime, and was

executed. And one of the same jurors v convicted Dodd, was executed on the sa gallows for the same offense, within a 1 months afterward. And Fauntelroy, v was executed for the same offense, says: first conceived the design of committing returning from an execution." And E. Wakefield, from whom we give statistics another chapter, says "a man of great mer power, and superior education," who was, tr for the same offense, told him "that the f thought of committing the crime occurred him while witnessing the execution of Fa telroy." How many facts of the same nat might we furnish the reader from our o country?

When Strang was hung, in Albany, N. a man, by the name of Kelly, who trave sixty to seventy miles from Otsego county see the execution, not more than a fortni after, loaded his gun and shot Spafford neighbor with whom he had previously ha difficulty, through the heart, for which he v hung. Thus perhaps, through the influence witnessing Strang's execution, both Kell and Spafford's families were ruined. For

told Kelly talked of nothing but Strang's execution, scarcely, after witnessing it, until committed the same deliberate act. And the evening of Kelly's execution, a man so was present to witness it, by the name of Oke, near Cooperstown, hung himself.

In a report of a committee of the legislature of Maine, there is a statement of the effect of public executions on the multitude. On the day that Sager was executed, in Augusta, "fighting and quarreling and their attendant vices were carried on to such an extent that the police had to interfere, and the hall which had just been emptied of a murder-threw open its doors to receive those who came to profit by the solemn example of an execution."

On the day of Lechler's execution, says Raleigh, "the usual scenes of vice and brutality were witnessed, and crime flourished thickly in its favorite soil, the execution ground. Twenty-eight offenders of various grades were committed to Lancaster jail that night, and many others escaped, or the jail would have overflowed." One of the spectators, on his way home, murdered another, and was arrest-

ed and his limbs confined with the same irons "which had scarcely been laid aside long enough by Lechler to get cold."

Thomas Barrett was executed in Worcester, Massachusetts, on the 3d of October, for rape and murder, and on the 14th another murder was committed within a few rods of the gallows, and not long after a rape in the same county, and only a few miles from Worcester; and within four months four cases of capital crime, and two of homicide, not capital, were committed within less than a day's journey from the place of Barrett's execution.

In our own state the same effects have been witnessed. Never has there been an execution, but the day and occasion has been the scene of drunkenness and debauch. In 1844, at Columbus, two men were executed, and the editor of the Ohio State Journal, who was there a few minutes, says, "we witnessed this day more drunkenness, more brutality, and more that was calculated to degrade men in the estimation of their fellowmen, than we ever beheld in one day, save on a similar occasion."

But why multiply instances in this age of

ervation? Does not every body know this
 the fact, that everywhere public execu-
 have had the effect to blunt the sensibili-
 of society, to awaken the worst passions
 the human soul, to stifle the feelings of
 passion and mercy? Yes! else why have
 many states, our own among the rest, or-
 dered that executions shall not be public, but
 private; witnessed but by a few, sufficient
 to see that "the work of death is done?"
 that be *right*, which the public dare not
 without being injured and corrupted by it?
 Is the government ashamed to do the act
 openly," that induces its doing it in private?
 Why not abolish it? Is it not because
 we have seen that it does arouse all the
 fiercer passions," and leads to consequences
 fatal to the public good, or the people's
 safety, to be longer tolerated in an enlighten-
 ed community; when they have witnessed the
 degraded passions of the crowd who have
 come to see "*the hanging*," if a reprieve was
 granted, or any other occurrence took place to
 prevent them from realizing their expecta-
 tions? Yes! This, more than argument,
 facts, has led to the abandonment of pub-

lic executions. Even ~~this~~ improvement gives us hope that the time ~~has~~ arrived when the all important step will be taken, and this relic of a darker age will ~~pass~~ away forever.

IT CORRUPTS THE YOUNG AND INNOCENT.

We have several times asserted that it blunts the sensibilities, and leads to cruelty and hardens the heart. We proceed to produce a few *facts* in proof. O'Sullivan gives the following affecting instance: "Two or three days after the execution of Leadings, a fine boy, of about sixteen years, the delight of highly-respectable parents, hung himself from the balusters of the stairs in his father's house in Albany."

The following circumstance occurred in this (Hamilton) county, in one of the most worthy and respectable families: The parents being moved by curiosity, went with hundreds of others to witness the execution of Hoover and took with them their two little boys, from six to ten years old. When Hoover was hung

boys heard so much about "the fun," that they thought it must be something very delightful to "hang;" so a few days after, while

boys were out in the yard behind the rehouse, the oldest thought it would be fine sport to hang his little brother; and accordingly got a rope and fixed it up over a limb of each tree that stood there, and placing his brother on a storebox, adjusted the rope, and then got down and pushed away the box; when down went his little brother, and too soon he discovered that it was not play to him; and on attempting to release him, he found he could not. He then screamed for help, when his father in the store heard him, and ran to his relief barely in time to save the child. This, said the mother, who told me the circumstance, "taught us but too painfully the impropriety of going to witness such scenes."

The Pennsylvania legislature, when they passed the act to make executions private, seems to have been convinced of the evil effect such scenes have on the minds of young persons; and, hence, they have expressly forbidden the presence of "minors." Pa. Laws, at. April, 1834.

May we not rationally conclude, that if public executions have a bad effect, private ones will also? The evil is only lessened, not removed. The people know that it is going on, and the minds of men will ruminate thereon; the imagination will paint the scene they cannot behold—so that the effect will still be pernicious; therefore, if you would prevent the mischief entirely, abolish the practice.

CHARACTER OF EXECUTIONERS.

Another evidence of the wrong of this practice, may be seen in the fact, that the office of executioner is, and always has been, regarded as a disgrace. And scarcely any man would stoop to the disgraceful office, except where legal obligation impels some respectable sheriff to perform the painful task.

William Ladd, the well-known philanthropist, states, that “in Spain executions have been delayed for months, because no one would incur the disgrace of acting as executioner. Sometimes no one could be obtained but a condemned criminal, hired by the office

of his own life, beside the usual fee, to take the life of another. And then nobody would approach him to pay him his price, but the priest would throw the purse as far as he could, when the poor wretch would pick it up and hurry away from the execrations of the multitude. And in some parts it is customary for the executioner to wear a mask, that he may not be known." Can a practice be right that brings such disgrace upon the officer? No! It is conclusive evidence of its wrong, that every good man will, and does, shun it; and that none but the lowest and most debased will be easily induced to take the office of its execution.

Now, if it is a political and *moral* duty to hang men, why this disgrace? Is it come to this, that to perform a *political* duty is disgraceful? It has not! And it never will, while men keep their senses, or allow themselves to judge correctly. Much less, if it be a religious obligation imposed on us by the Bible, could men of moral sensibility shrink from its discharge; but religious men would generally, at least, be as ready to perform it as others. But where is the community that

would not condemn any member of the to expulsion, for consenting to hang a being, unless he were the officer sworn to execute the law? Or where the Church would not revolt at the idea of making execution of this law the duty of the minister of religion? Why? Because they, even in or out of the religious world, count on grace! Again, I ask, can any thing be done that any and every man may not do with grace? It is an old and good maxim, command what you would be ashamed to do yourself."

We think we have sufficiently shown that the influence of the death penalty is injurious upon every class of the community; hinders the criminal's reformation—the only true object of punishment. It demoralizes the spectators, and especially the young; hardens the common heart; blunts the feelings of sympathy and humanity; wounds the human soul, and casts charity and forgiveness from her throne; cheapens human life, and fails to give protection from the crimes, for the sake of which its horrors have been endured. And, indeed, answers the ends of a good government.

To all this, some of the gallows men will reply: "That as bad as things are at present, with the existence of this penalty, remove it, and things would become a great deal worse; that, although it does not altogether prevent these crimes, it checks and greatly lessens them. If some men are so hardened in wickedness that they would murder, even with the fear of death before them, much more will they murder when that fear is taken away." This is but assertion, and not proof; and we assert the contrary, with much confidence from our knowledge of human nature. Therefore, reader, let FACTS decide which assertion has the best claim to your decision. Although the experiment of a mild, humane, and reformatory course of treatment toward criminals, has never been tried under as favorable circumstances as now exists in this more enlightened country,—yet we may safely say, that experience has already proved that life and property, the public peace and private rights, have been better protected, and quite as strong a check been held on crime, without, as with the terror of the gallows. We submit the following facts in proof.

hich the terror of the gallows was withdrawn, became less frequent after than before the change."

Thus confirming in our own country, the experience of ROME, DELHI, PARAGUAY, DENMARK, FRANCE, RUSSIA, PRUSSIA, ENGLAND, WALES, BOM-
AY, AND HOLLAND;—the history of whose punishments abundantly prove that the Death penalty is not NEEDED.

Those who wish to examine the facts which are disclosed by the experience of those countries, we refer to the more elaborate works of O'SULLIVAN, SPEAR, Burleigh, and the London Morning Herald of 1834.

A MURDERER IS NOT FIT TO LIVE,"

exclaims the objector. Suppose it true? Is that a sufficient reason why we should put him to death? His living while he is *unfit*, we do not cause! His dying *unfit* we do cause, if we put him to death. We deny that he is *unfit* to live—especially if "the great object of life is to prepare for death and eternity." As well say the child who cannot read is unfit for

school, or the sick for the Hospital. His moral disease is a reason why he should live as long as God sees fit to let him! God knows better than we whether he ought to live or not, and if His wisdom says, "let him live," who dare set their weak judgment in opposition? The Bible says, "to him that is joined to all living there is hope." And we intend to show, in the course of this investigation, that murderers are fit to live—that they ought to live—that God has decided the question for us by His own wisdom; and strictly forbidden us to destroy the life of any man. That the power over man's life is reserved by God as His own prerogative, with which He has forbidden us to interfere, by giving all men a positive injunction not to "kill." And we also intend to show that murderers may, and should be, put to a better use, and that to hang a man is not only *unjust* and *wicked* cruelty; but that, making our prisons what they ought to be, men may be reformed and made useful members of society.

'THE MURDERER IS BEYOND THE HOPE OF REFORM,"

His malady is incurable," says the objector. Who told you so? who gave you the ability and authority to judge of the condition of men's souls? or to say to the power of Redeeming grace, "thus far shalt thou go, and no farther"? or to "limit the holy one of Israel"? Is there not mercy with him, and plenteous redemption?" Ps. cxxx, 7. "Hath not God aid to those 'whose hands were full of blood', though your sins are as scarlet, they shall be as wool: though they be as crimson, they shall be as snow." We deny that the "*murderer* is beyond the power of reforming grace." Was not Cain a "*murderer*"? Yes, and his sin was of the most heinous character—his passion the very basest that moves the human heart to deeds of crime! Jealousy, because his acts were evil, and his brother's good! Ought he not to have been put to death? No! If the murderer should have been executed, would it not have been done by him who sat in judgment in the case, and whose *wisdom* could not err?

God brought him *immediately* to judgment, and when the condemnation of God's Law came upon the guilty murderer, he felt the truth of God which declares, that "He will by no means clear the guilty." And who dare say that Cain's punishment was not sufficiently severe? Did not Cain suffer enough for his crime, without being put to death? If you say he did, then the death penalty is not necessary. If you say he did not, then you charge God with *folly* and *injustice* in remitting that part of the penalty of God's Law, from which the guilty cannot escape only by the Divine interference in their favor, viz: the awful horrors of a guilty conscience, and the overpowering dread, that from the hands of his fellow man, he will receive the same violence which he has employed. But when the power of this divinely ordained law had *sufficiently* punished the murderer, God, in mercy to him, removed his torturing apprehensions, by placing a mark upon Cain, and forbidding any one to injure him. Thus showing us that the infliction is not the object of his penalties—but the preservation and reformation of the offender is the aim of the divine administration.

I know the Rev. Mr. Cheever speaks of God's conduct in this case, as an experiment, to see whether capital punishment could be dispensed with; and which resulted in the most disastrous consequences. "I have argued, (says he) that in consequence of the divine lenity in the case of Cain, the crime of murder became frightfully common, the earth being filled with blood and violence. The assurance that his life would not be taken, with which Lamech, whether a murderer or a homicide, comforted himself and his wives by the example of Cain's preservation, shows how men are reasoned from that lenity; and that the consequences of it would be a great cheapness in the estimate of human life, a great freedom from the indulgence of violent passion, unrestrained by consequences, and a perfect recklessness and recklessness in bloodshed.

Alas! for the short-sightedness of the Deity; for his folly in Legislation; for his want of wisdom, not to have foreseen a result so fatal to human life and happiness!!! What a pity he could not have had the wise counsel of the all-wise-loving D. D., to have prevented this fatal error. Oh! Shame, where is thy blush?

How will not men impugn the wisdom of both God and man, to support a false and tottering theory.

In further proof that murderers are not beyond the reach of reformation, we remark that Moses was a murderer; and yet he was afterward the chosen servant of God, by whom he manifested his power and faithfulness to Israel, the Egyptians, and the world.

David was a most guilty murderer of a loyal and faithful subject, for a most base and disgraceful purpose; and yet after being sufficiently punished to produce reformation, he became, by the grace of God, both a King and a Prophet in Israel.

Saul, of Tarsus, was a *murderer*, and assisted in the murder of the righteous Stephen. Yet we hear him afterward, saying, "By the *grace* of God I am what I am." "I labored more abundantly than they all: yet not I, but the grace of God that was with me." Hark again is this the voice of a *murderer*, or of a *criminal redeemed*? "I have fought a good fight; I have kept the faith; I have finished my course henceforth there is laid up for me a crown of life," &c.

The Jews were the guilty *murderers* of Christ, the righteous and holy Son of God; yet Jesus prayed for them; which he would not have done, if there had been no mercy for *murderers*: for he always prayed in accordance with his Father's will. And we find that many of them afterward believed on him. It will not do, therefore, to cry out, "if we don't hang murderers, there will be no security for *life and property*!" Is every *murderer* a thief and a robber? No! Is it the best way to preserve *life*, to kill men? No! No!!

BUT MURDERERS ARE DANGEROUS MEN,"

Exclaims the advocate of this sanguinary system. So are *maniacs*,—will you hang them, too? Oh no! Then it is not because they are "*dangerous*," but the gratification of REVENGE (that dear, delightful passion), that lies at the bottom of all those "*pious fears*." "Father forgive them, for they know not what they do."

We have shown from God's conduct in above cases, the *inexpediency* of putting me death—that in these cases, it would not have been best, or it would have been done—if not in these, why in any? It is never expedient to do wrong in any case; and in the cases which we have shown from sacred history, there was as much evidence of the innocence of the *murdered*—and base passion the part of the *murderers*—as the history of human crime can furnish. And yet none dare to say (except such men as Cheever) that it would have been better to have executed them, than to have reformed and saved them as God has done; and we ask, is his power shortened, that he cannot still save the murderer? No! for “where sin abounded, did much more abound.”

But yet some, perhaps, will say, with Cheever, “It is *expedient* to hang murderers where the sentence of death is passed on them, it will have a reformatory influence, quickening the soul to greater diligence preparing for death and eternity; and therefore, be the very means of their repentance and salvation: while, if an i

site were allowed him, it might be the means of his never repenting; and, consequently, of his eternal ruin." This is the argument of Mr. C.; perhaps not his exact words.

To this argument we reply: That it is charged on God with being either *unwise* in not making a salutary provision for all sinners: or *unkind* to them, in not giving them the benefit of a "*set time notice*," whereby they might have been induced to greater diligence in securing their salvation. But this he hath not done. And if this "*set time notice*," with the aid of the laws, is so beneficial in the salvation of criminals, why confine its salutary discipline to murderers? Do not other sinners need penitence too? Is it not a narrow and partial policy, to limit its benefits to *murderers*? If it is kind, is it merciful, to punish the "*less guilty*" sinners, in a manner which may be the means of their never repenting"? To make the chance of perdition greater as the time lessens? Nay! But why stop at criminals against human laws? why not give all "*impenitent sinners*" against God's moral laws, so, the advantage of a "*death sentence*"?

This *exclusive sympathy* for murderers more than our gallows advocates.

Granting, however, for sake of the argument, that men "do repent under sentence of death," should we then hang them? What if they truly repented, and have been born again, become new creatures, they are no longer guilty; they discharge all their moral obligations. They are *now* "fit to live." Here is the question: is it that man that deserves to die? Is it the murderer or the child of God? If the murderer is now a christian? Is the world so full of murderers that it is best to hang them, now, rather than wait until they are converted, for fear that they may be unfaithful? And if you do hang them, you are not guilty of "shedding the blood of the innocent." Here, then, is the alternative (as to them) you either cut off the sinner from the church, *pénitence*, and send him to eternal damnation, or slay one of whom God has said, "Whosoever is thus zealousness shall he live." You put him in the "Temple of the Holy Ghost"; you make him a member of "Christ's body"; you make him the "salt of the earth"; you drive him out of the world, those who should be its light.

ose repentance "there is joy in heaven." wever, for ourselves we must say, we e no confidence in this doctrine of "*forced ntance*," or in this sudden change of man's ure, as the effect of repentance; and almost ry case where criminals have made such fessions of sudden change, in view of death, hey have been pardoned, or their punish- it commuted, they soon proved ~~the~~ themselves to possess the same nature they possessed ore; although, in some cases, they have n led to a more firm resolve to govern, with ore firm control, the passions and inclina- is which had led them to crime. But in st cases, the condemnation of men to death had the effect to harden them against, not y the law of the land, but also against those o were its executioners. Regarding the ect of the law as *retaliatory*, they have felt, endeavored to feel, justified in their crimes; l instead of improving the brief space owed them to prepare for death, they have en employed it in schemings to escape, or hopes of being somehow avenged on those o had been instrumental in their appre- sion and condemnation. This is the case

of all those whose love of life is the strong and governing passion. They will occupy their minds in this way; for their hope of escape predominates over their fears of death.

But there are others, in whom the love of life is small; who have but little in life to enjoy, or hope for, and much to suffer and dread, which makes life almost a burden; who would, for a trifling gratification of a stronger passion, cast it away; or at least hazard its being taken. "Outcasts from society, individuals with whom life is already so deprived of comfort, of respectability, of happiness, that a jail, with its food," or a gallows death with its notoriety, and evidence of compassion from the multitude, would be a release. Is it likely that to such as these, "death would be the most terrific of all penalties"? when it is so often treated with contempt by the prosperous, the hopeful, the respected and beloved; those who have most to live for, most to lose in dying. As we have shown to be the case with the *duelist* and the patriot, whose fear of *disgrace*, or love of fame, is stronger than their love of life. From these characteristics in man, it often comes to pass that murders are

ometimes committed without a hope or effort to escape the penalty. In all such persons, "ruling passion" is so strong as to so occupy their thoughts even in death, as to preclude the "*death notice* repentance" so much depended upon as an advantage to the world.

THE MORBID SPIRIT OF THESE REFORMERS."

is often urged that there is a "*restless*" spirit in some men that is always disturbing the quiet of society with speculative projects of reformation, who would, if encouraged, overturn our long-established institutions." We, for ourselves, and the race, "plead guilty," in part; we rejoice to know that the doctrine of reform is the doctrine of man's intellectual improvement; without which, no improvement in man's condition could be achieved. If men were perfectly satisfied with their present knowledge of truth, in the various departments of science, (and is not government an important science?) of literature and the arts, whence could come improvement? How long

before man would lose that spirit of enterprise and improvement, which is the happiness and glory of the civilized world? Well, if in the forward march of man, some long-established institutions are "overturned," or removed, what evil is done? Is their *antiquity* an *insaluble* proof of their superior excellence? If so, why overturn the ancient heathenish Polytheism? why not still adhere to the oldest theories of astronomy? Why 'adopt the Copernican improved philosophy, &c. &c.? If new truths are *dangerous*, why not stop our law-schools—our literary institutions—our theological establishments? Why establish Philosophical and Mechanical, Agricultural and Commercial associations? Too late for such objections; and we should not have noticed this objection, only that we write this treatise for the mass (not the learned critic), and in the multitude whom we hope to reach, there may be some of those conservatives who always meet advancement with it. While it continues to be admitted that the world needs "*improvement*", we hope the "*antiquity*" or "*prevalence*" of any opinion, on any subject, will not exclude the examination of the propriety of adhering to, or main-

aining it. For if the cry of "*innovation*" is to frighten us, farewell to every improvement in the condition or happiness of man.

We have, we think, sufficiently shown, not only that the death penalty is not needed, but that it is demoralizing in its effects; unjust in its operation; and cruel and unrighteous in its consequences! and therefore ought to be abolished!

"THE SCRIPTURE AUTHORITY."

But after all that has been urged, as a last resort for the maintainance of this bloody practice, we may be told "all your reasoning against the execution of murderers amounts to nothing; for we are commanded to do it, and the divine authority is not to be set aside by your doctrine of *inexpediency*, or arguments against its *injustice* to the innocent connections, or its cruelty to the criminal; God's command is superior to all other obligation!" We most cordially admit the superiority of that authority, provided it be *proved to exist*. But that is the great and important fact to be *established*.

We deny the existence of any such command or that the Scriptures of divine truth, even proposed on man any such obligation. Yet we intend to go farther ; we expect to be able to show, that the Bible not only does *not* command it, but that it *positively forbids it*. Here is our great fortress of the gallows men. Chances and all others, make it their stronghold ; therefore, here we will meet them. Every "inch of ground" will be contested fairly, but firmly.

And in order that the contest may be fair, let me remind the advocate of this authority, that the proofs of its existence lie with him ; if it is denied, and he must furnish proof, and full to show that the scriptures, on which he bases his authority, contain a *command* to take the life of those whom he asserts *ought* to die. This will not be taken for granted, unless he furnishes the text ; but he must remember that the text and the Bible is one thing, and his exposition of them quite another. He therefore must furnish the proof that the Bible contains the command. The labor of *dissuading* it does not legally belong to us ; although we may, in accommodation to the public

at present, do so. Again, honesty of opinion, however much we may regard it, is not a test of truth in explaining the Bible ; as the diversity of creeds and sectarian expositions of it, fully show ; for however honest, they cannot all be right, and may all err more or less in their view of the Bible's teaching. This proof they have not furnished ; they have assumed it, and built their fortress on this assumption. The demand for this proof is seen to be necessary, when we remember how the opposers of reform have from time to time used the Bible to check its progress ; "not alone in theology and morals, but in *politics*, and even natural science ; quoting it now against a Galileo or a Columbus, and now in favor of the divine right of kings ; employing it to prop up here some hoary tottering error, and there some crumbling system of oppression." When these things are remembered, we may not wonder that the opposers of the reform which we propose should seek to bring the Bible to their aid in maintaining this long practiced cruelty. But at the same time it should lead us to distrust their version of its teachings, unless well supported by proofs.

As the false notions of other times have yielded to the power of advancing truth, and the most pious and sound in doctrine now admit the harmony of scripture with the discoveries of science, and in this country, at least, with republican principles : so, perhaps it will be admitted, when a wise and just humanity shall have wiped the blood stain from our statutebooks, that the Bible does not bid us to punish crime with death. The opposite doctrine will likely be taught by some, so long as the state enjoins that penalty. In Russia, the Bible is held to justify despotism ; but not to require a death penalty for murder. Here, directly the reverse. In some countries it is supposed to sanction death for many crimes ; in this state and some others, only for *murder* in the first degree. The learned Matthew Henry, in England, interprets Judah's command to bring forth Tamer "and let her be burned" (Gen. xxxviii, 24) to mean "not to be burnt to death, but burnt in the cheek or forehead ;" which would have been her punishment by the laws of England. Thus showing that what is practiced or legalized, goes far

determine what will be taught as authorized the Bible.

Since, then, interpreters differ so widely, and are so manifestly biased by the prevailing sentiment and usage around them, what is it at the height of each rash presumption to issue so important as is now before us, to the doubtful chance of their correctness. How cautious should we be of giving a construction to any text of scripture which would bind us to cut off a brother's life, "and put in jeopardy a human soul!" Nothing but the clearest evidence which the case admits, should be deemed proof that God requires of us an act so solemn in its nature, so fearful in its consequences.

We come, then, to the Bible authority for the death penalty—which is declared by its advocates to be the "fortress of the argument in its support." And in attacking a fortress, it is well to try the gate first, and if an entrance can be effected by it, perhaps much labor may be saved—and on coming to the gate, although it is not open, yet we find the posts to which it is hanging are not very firmly set. As the strength of this "*fortress*" depends on the correctness

of scripture interpretations *entirely*, it well to establish the same rule of interpretation to begin with. It is laid down by the wisest theologians, as an indispensable that "all interpretations, to be correct, shall harmonize the scriptures." That the notion of no one passage shall contradict the obvious teachings of another.

Upon this correct basis, then, we stand, for it is one that none will contradict. The rule is, that where a passage is of doubtful interpretation, or capable of different expositions, that interpretation shall be deemed most correct, and be followed, which avoids confusion and contradiction.

The strong passage relied upon, and by Cheever and others the "*fortress*," is ix, 2 to 6. And here we notify the reader that our opposers have endeavored to turn to their advantage of us in the argument, by joining this passage with the Mosaic law, and arguing them connectedly. This is a deception practiced upon us, either deliberately or ignorantly; they are widely separated in time and circumstances; it being a promise made to Noah and his children, re-

and privilege—given several hundred years before Moses was born, or his law which contained a penal code.

They say that this passage in Genesis is any legal code—but assert, that when we come to the ~~law~~ ^{divine} a legal code (which by the way is the only one God has written for man, giving it generally to the wisdom of men to make their own political laws, according to their circumstances, as their own folly might dictate), in that legal code expressly forbade the exercise of this power, by inserting in that law the prohibition “Thou shalt not kill.” This is the God-written law, whose binding force extended alike to ruler and subject without exceptions. In this law God did not say “except murderer.” He did not say “except murderer—him you shall hang.”

Now, in a legal code contained in ten commandments forbidding crime, which all confess to have made the shedding of blood a capital crime, he made the shedding of blood a crime in which all were interested in that code—and made no exceptions whatever to the prohibition it contained.

Now we argue, that if God had given a command to Noah’s pos-

terity as contended—he would have made an exception, or the exception of the bloods here. For we think whatever God enjoins as a moral duty, he always enjoins as a duty; and if prohibited once, he would not in his law or moral code interdict. And there is no ambiguity, in the command ‘thou shalt not kill,’—we must interpret the passage in Genesis in such a manner as to harmonize with the prohibition in this. Can this be done without violence to the word of God?—is a question worthy of our attention, and to it we reply, it can; and in a manner which will not only harmonize the various parts of the Old Testament, but will also harmonize the Old with the New; so that the word of God may run throughout the whole revelation from God to man; and this cannot be done while the exposition given of Gen. ix, by the opposers, is received as the correct one. Here we may remark, that the want of harmony of interpretation is the element which sustains infidelity and skepticism.

If the necessity of this harmony in the relations of God be admitted, and we think it must be, then we think we have clear

that their exposition of their strong text is wrong—for no man yet has ever attempted to build the defense of the death penalty on the Christian Code, or support it by the commands of Christ, but acknowledges it is contrary hereto.

And it should be remembered, that this alleged rule of duty for a Christian age and people is found not in what is properly the Christian scriptures, but in those relating to a dispensation farther back than even the Jewish. Holding, as I believe all theologians do, that in point of clearness and fullness, revelation of truth and duty was progressive from the earliest ages to the close of Christ's teachings; therefore, this going back, not merely *to*, but *beyond* Moses, for our guide, shows that the advocates of the death penalty feel the need of going from light into darkness; I had liked to have said "because" the deed was evil! It is true they quote a few texts from the Christian records, but only as collateral testimony, not as being of themselves sufficient to sustain their cause; only as forming the outposts to their "citadel"—not to be trusted for their main defense. But collateral testimony avails nothing,

if their direct proof fails : the outposts be held when the citadel is carried. On passage alluded to, therefore, must be their chief reliance. Not by the clear sun of Christian noon, not even by the glimmer of Jewish "daybreak," but by the one lone star of dim starlight, struggling through the gloom of a yet remoter age, they bid us rely as duty as followers of Christ, in relation to a matter of such vast importance to mankind.

Let us now, by the assistance of the light of the great and good of both present and past time, examine more narrowly the structure of this "fortress," or "citadel of the argument," commanding and sweeping the whole subject as Mr. Cheever calls it. Mr. O'Sullivan and Mr. Rantoul, in their labored works on this subject, show that this passage in Genesis was not regarded by the Hebrews then as a command of God to slay the Egyptians; of blood; from the fact, first, that the Hebrews did not do so, as may be seen from Jacob's conduct in the premises, in the case of Simeon and Levi, who most deeply planned and executed the murder of Haman and his brethren. Now if Jacob had re-

this as a command, would he not, as judge and ruler of his people, have faithfully executed this command, by putting the *murderers* to death? He would not have disregarded the injunction. While we hear him on his death-bed telling these murderers of the retribution which would overtake them for their sin, we hear no intimations of his repentance of not having done his duty toward them, nor even alluding to this death penalty for their sins.

Another and perhaps a stronger evidence, that the Hebrews did not regard it as a command, is the fact, that the seventy-two learned Jews of Alexandria, who translated their Hebrew scriptures into Greek; did not insert the words "by man"; but gave it as they understood it, merely as indicating the natural results of violence. They surely understood their own mother tongue; and if the passage in their sacred books, which they so highly esteemed as to translate and preserve among their children, had taught this sentiment or contained such a command, could they have so translated it?

Farther, to show the workings of this "for-

tress," I will introduce a careful criticism from the Democratic Review of March page 228. "Although the question is criticism, it may however be made enough to the *unlearned*, as well as to the scholarly reader. What is the literal meaning of the Hebrew of the 6th verse of (This is the first question. Simply this : drinking blood of man in man his (or it will be shed " No one will dispute this in order to convert this into the common English version, three things have to be done on the strength of some right or authority, **wherever** it may reside, it is **where** it does not belong to the Hebrew. Namely: 1st. The *participle* "*shedding*" only made personal and masculine, confined to the personal and masculine in the words "whoso sheddeth." 2nd. The verb which in the original is the simple present tense, so as to be rendered in Latin *effundit* and in English "will be shed," must be in an *imperative* sense so as to be read "shed." And 3dly. The expression which is generally in man, in the original, must be made to denote agency, by selecting and assigning

the preposition employed only one of its various meanings, so as to be converted into "by man." It is only after the performance of this triple process that the original Hebrew (of which we have given above a literal rendering) becomes translated or rather transformed, into the common English reading of our Bible.

Respecting the *future* form of the *verb*, however, we deny most emphatically that our opponents have any right or reason to claim for it any necessary *imperative force*. Do they deny the fact? No. But they say, as there is no third person *imperative* in the Hebrew, the *future* has to be used when it is desired to express that sense. The word *may* undoubtedly be so rendered *if we choose*, but it is not necessary to do so. Because the future form may sometimes be rendered imperatively, must it always be? Are *may* and *must* identical? For one instance of the *imperative*, ten can be pointed to of the simple and proper future tense. In the verse immediately preceding, in which it is said, "every moving thing that liveth *shall* be meat for you," &c, it will hardly be contended that there is an *imperative* command to make meat of spiders, rattlesnakes,

&c. And here we will add a few messages confirming the fact that "*shall always*, no not even *generally*, used in the tures in the *imperative* but in the *i* sense. "Bloody and deceitful men *shall* out half their days," Psalms lv, 55-7. command to kill them, or for them t "The wicked *shall* do wickedly, and the wicked *shall* understand." Daniel Is this *imperatively* a command to sin, to understand the truth? If so, this is mand of God to do wickedly. None tend this—then this "*fortress*" is not *imp*

We might multiply passages, but t enough. "Our position (continues th in the 'Gospel against the gallows') point cannot be shaken; no scholar, n reasoner, can dispute it—namely, that not necessarily anything *imperative* in of the Hebrew verb here used, and the as well be rendered "*will be shed*" (de tory or declaratory)—or "*may be shea* missively). To give it the *imperativ* and then claim our obedience as a co is not only to beg the whole question, t *imperatively* to clothe in the garb o

riority that which is the mere *imposture* of man assumption. In the present application of it, it may not unfairly be compared to act of forging a Sovereign's signet to a death warrant."

THE TRANSLATIONS VARY.

We begin with old ones, as antiquity with the people has great weight. The Alexandrian version into Greek made by the seventy Jewish Elders, nearly three hundred years before Christ, has it, when literally rendered, "Whoso sheddeth man's blood, *for* his blood, the blood of the slain) will have his own paid." The Samaritan version, as rendered into Latin, has it, "*pro homine sanguis ejus effundetur*" — "for the man his blood will be shed." While the Latin vulgate renders it simply: "*Ubi sanguis effudit humanum sanguinem fundetur sanguis illius,*" — Whoso sheddeth human blood, his blood will be shed. All of these ancient authorities omit altogether the words "by man." Martini's Italian version, "Whoso sheds man blood, his blood will be shed," making no mention of the agent. Deodati's Italian version "The blood of him who sheds the

blood of man, *will* be shed of man." The French Bible in common use, and which is distributed by our Bible Societies, has it — "Who will shed the blood of man *in man*, his blood will be poured out;" making the "*beth-adam*" of the Hebrew to refer to the mode of the first life-taking, and not to the agent in the second. The Huguenot translation is the same. Faber d'Olivet translates the last clause of the passage "through man *will* his blood be shed."

Paschal quotes it, "whoso sheddeth human blood, his blood will be shed;" and adds — "this general prohibition takes from man all power over the life of man." Cahen, the director of the Hebrew school in Paris, who lately published a new version of the Old Testament, also uses the future *indicative*, "will be shed." Calvin says — "To render it '*by man*,' is a 'forced' construction" — and interprets it as rather in a *denunciatory* than in a mere legislative sense. Swedenborg also renders it — "He who sheds the blood of man in man, his blood shall be shed" — placing the comma after "in man," as in the French Le Clerc (who is high authority) says in note, "that while some translate it '*per* homi-

n,' that is, *through* or *by man*, and that the position, '*beth*,' is constantly to be found in sense of *per*; yet, "in accordance with most frequent usage of the Hebrew language, it would have been said B S A D —) A M, *by the hand of man*. Yet it is always l, B A A — D A M, or in man, or among 1.

s *in man* would scarcely make sense, we pt the other signification, *among men*; nce arises a plain proposition, which is same as that of the words immediately eding, but more clearly expressed. God said that *he will require* the life of the man n, from the slayer, among men or among sts; He here the more fully sets forth the ie truth, when he says the blood of the rer will be shed. A similar expression oc- s in Ecclesiastes viii, 9, and Exodus xiii, and expresses what will generally hap-, viz., that "violence will beget violence." s is the opinion of most men, of both an- it and modern times, who have examined subject. The reader will see, then, that "fortification," so much boasted of by ever, and other gallows advocates, is a new ;, and not very well "*manned*," at best.

CONSEQUENCES OF ADOPTING MANDATORY CONSTRUCT

Now if this passage be received as a command, we must regard it as imposing mandatory authority on men, from the issue onward perpetually. Then let us take the stands, and see what will be the result. "Whoso"—here is an unlimited command to punish, with death, any man who shall shed the blood of a man, no matter under what circumstances. The release of none is by any means suffered; he has shed the blood of a man, must be shed, for God has *commanded* that disobedience to God's command, is a sin; therefore, none can be pardoned. We cannot stop at the premeditated murder; no, every homicide must share the same fate. Again, this command issued from God, is the establishment of criminal courts, not, therefore, directed to them for execution, but to all men everywhere in their judicial capacity. Nor must its execution be limited to the destruction of the life of the man who first exposes himself to death.

mandatory authority ; but he who executes this duty has thereby incurred its penalty ; for the mandate was given to individuals, unassociated in political compact, and has never been by divine authority transferred to any legally constituted judicial establishment. This construction of scripture authority, would not only 'fill the world with bloodshed and violence,' but it would depopulate the world and extinguish the race (for the injunction is unlimited), unless some homicide should immediately stop the process by a hasty suicide.

Who will say that no homicide should be spared ? that it would be better for the world that every manslayer should die ? What think you of the preservation, as we have shown, of Moses, David, and Saul of Tarsus ? Do you mourn over the error of God's lenity ? Or do you rejoice in his *wisdom* and mercy ? If you say it is best in some cases to spare their lives, then you give up the whole controversy on the text ; for if it is discretionary with men how they shall act in the matter,—then it is not an *imperative* command. And if man's discretion may spare some, for reasons which seem pro-

per to them ; then if they should find sufficient reason to think it best, they may spare all.

But again ; if this is an *imperative* and *unvoked* command, and universal in its obligation, there must be no delay in its execution (and then Mr. Cheever's "set time not benefit would be lost), lest we might not be able to do our duty — for he may escape death before we have obeyed. And if God commanded us to duty without giving us a specific time, and we may delay that duty for a day, why not a week ; and if we may a week, why not a year ; and if a year, why not ever ?

We think we have not only entered the "fortress" of our opposer's argument, routed those garrisoned therein, but we dug up the foundations thereof with their tools, viz., the various versions of the Scriptures, and the criticisms of their scholars in many cases ; for who will question the orthodoxy of Calvin on this subject the death of Servetus — or question the honesty of Le Clerc in criticism ? We have shown that their interpretation of this passage is contrary to the clearly declared law

which forbids man to kill. We have shown that it makes no distinction between the grades of crime in shedding man's blood ; that it allows no escape, and admits no pardon ; and is therefore in its requirements even beyond their most revengeful desires.

"Again ; the notion that God here commands us to kill the manslayer, is inconsistent with the clear intent of the whole passage, text and context. Its manifest design is to teach, in the most impressive manner, the sacredness of human life. Now, will a command to destroy life make us revere it more ? Will God's image seem more sacred because we are bidden to deface it ? Surely not. If one violation of its sanctity has lessened our reverence for it, will not another rather aggravate than cure the evil ? You still call murder a violation of God's image, even when its victim is a wicked man ; then does not the killing of a murderer violate it too, and impair your sense of the sanctity of life ? Facts testify that it does." And Mr. Cheever complains of God's conduct in Cain's case, on that very ground — causing "a great cheapness of human life, and a recklessness in bloodshed."

The proofs which have been given of the moralizing influence of the gallows in the 1 part of this work — of its tendency to lo the general estimate of the worth of hur life—"tell powerfully upon this subject." " make this passage a command, that we sho slay the murderer, then, is to defeat the v purpose " of God in giving it !

"The solemn mandate, simple and unqu ified, "THOU SHALT NOT KILL," sets the t value on the life of man, and fixes the dee regard in the human soul of its sacred and violate sanctity. And he who affirms contr to this plain law of God, must furnish evide of the exception, in God's word, clear, pl and unequivocal. "No statute in the lo temporary code of Israel,—no words of dou ful import in the covenant of Noah, can ab its authority *over us*." But the *impera* construction of the sixth verse of Genesis conflicts with that authority, and must the fore be wrong.

The clearest sense, then, of this text is, Le Clerc has shown, simply this, "Wh sheddeth man's blood *among* men, his bl will be shed.

This does no violence to any rule of translation ; for in translating a preposition from one language into another language, that preposition should be used which best conveys the sense ; *by*, or *among*, does best express the sense. And as it is in the *indicative*, and not *imperative*, it perfectly harmonizes with the other plain teachings of the Bible, showing us the sacredness of human life, and *only* God's sovereignty over it.

When this and many other texts in the Bible are taken in their most literal and obvious sense, they cannot be regarded as teaching that death will with infallible certainty come to all, but express a general proposition or warning of what will likely, or generally, be the result of pursuing such a course. As an example see the following: "Whoso diggeth a pit shall fall therein." "The wicked shall flee as a dream, and *shall* not be found." It is also said of the wicked — "the wicked become old, yea, are mighty in power," "the wicked flourish like a green bay tree," "the way of the wicked prospers, and all shall be happy who deal very treacherously ;" "the wicked shall not live out half

their days"—"there is no peace to the wicked." Now these texts are not contradictory of one another, or contrary to every day's experience when rightly interpreted. We also read, "the Godly man ceaseth, the faithful fail from among the children of men;" that "the good man is perished out of the earth," and "he that departeth from evil maketh himself a prey," again, "the wicked shall fall by his own wickedness."

We all know that some wicked men have often a large share of worldly prosperity—riches, honor, power, and often long life; while some righteous and better men are poor and oppressed, and afflicted.

But who of us charges these texts with contradiction or untruth? Or who thinks them contrary to the facts of human experience? One class of them is taken as general statements of the familiar principle that "honesty is the best policy," or that "Godliness is profitable to all things," (even *imitating God is not putting to death the murderer.*) while the other class of texts is taken as seeming exceptions to that general rule, and so taken, are both true. So too, this declaration, "he blood-

the bloodshedder will be shed,' should be regarded as no more than a general assertion; and as such, it was emphatically true in that early period, between Noah and Moses, when the avenger of blood, the nearest kinsman of the slain, pursued, not to ask the motives or the circumstances of the slaying, but sought his vengeance alike against the innocent and the guilty slayer.

That such was the bloody custom of those times, seems evident from the Mosaic code itself; for to remedy that very evil the cities of refuge were instituted, that he who slew by accident or in the heat of sudden passion, and not with deliberate malice, might have a place of shelter until the blood avenger's wrath should have time to cool. (Deut. xix, 4, 6.) The fair presumption then is, that before the institution of cities of refuge, all who shed the blood of man were in like peril from the blood avenger, whether they did it maliciously, or in sudden quarrel, or in selfdefense, or in retaliation. For aught that appears, the avenger himself was liable to the same danger in his turn. The state of society was doubtless such as we have seen it among barbarous nations

at much later periods, and may still be seen among savage tribes ; such as the poet paints, when he makes the lisping child of a slaughtered chieftain say,

“ And if I live to be a man,
My fathers death revenged shall be.”

Remember, reader, that this passage we have devoted so much attention to, is no part of the Mosaic code, as our gallows advocates often seem to represent it, for the purpose of giving it greater authority. We have shown above, that that code, given by God to Moses, contained a positive prohibition to take life under any circumstances ; and extended its authority over all those to whom that law was given, from the highest in authority, to the lowest in subjection. And whatever authority the later *institutions of the Israelites* may have possessed, they imparted no sanctions to this passage as a command from God.

Nor am I prepared to admit the moral obligation of the Jewish institutions to be such as to bind us to their observance at all.

For if their authority be contended for, as imposing obligation upon us, we cannot select such portions of their code as we may deem

appropriate to our day and circumstances, and reject the remainder, as unsuited to our condition. We must take it altogether as authoritative, or reject it altogether. Then, if one of capital crimes is regarded as proper for us, the whole thirty-four (I believe that is the number) must be executed.

And where is the gallows man who will advocate its adoption as a whole? Why not? 'It doesn't suit our circumstances!' But if morally right, why don't it suit them? Are not the principles of moral obligation perpetually existing? Yes, my friends, they are eternal; they never vary to accommodate the circumstances of society. That mutability belongs only to political and temporary institutions; not to the moral obligation of God's laws to man.

Hence the importance of the examination we have been making to ascertain whether the command, ix, was a command or not; for if it is as a command of God, the obligation of it would endure as long as the reason on which it is based exists. And as men in every age, country, and condition, are, and will be, liable to passion and revenge, the necessity for this

obligation then, must be coexistent and coessential with man's earthly existence. It cannot be a local or temporary enactment, depending on the circumstances of society for the validity of its obligation, nor can it pass away with those changes which take place in the condition of men. If, then, the necessity of this command is coexistent with the race, it must have existed and been in force ever since men were on the earth — for “while the reason stands, the law remains!” If, then, at any time since man was created, no such law was in force, no such law can ever be, and therefore this text is not such a law.

Many of the gallows men think the death penalty was not known before the flood; among them is Mr. Cheever, yet he contends, that “the obligation of the ordinance endures as long as the reason on which it is founded.” Well, can Mr. Cheever or his friends tell if this reason always existed, why, for so many hundred years, God let the murderous world remain without it? And why, if right and necessary as a moral means in man's government, God himself did not use it? (as we have shown in Cain's case, Gen. iv, 8-15, and

ech's, iv, 23.) Did not the Almighty Judge
 v what his own law required, that he did
 condemn the most guilty murderer to
 h? Why did he not give this command
 is servants before the flood? Had he not
 earned the necessity of making this whole-
 law? or enforcing its obligation by
 own example? Or had he not until after
 flood discovered the error of this "undue
 y" to manslayers? Oh! Atheistical Infi-
 y!!

t, if it was a law to the posterity of Noah,
 n by the Divine lawgiver himself, how
 s it to pass that we still find God not re-
 ng it in his administration of justice to-
 the murderous Simeon and Levi, who
 ered all the male inhabitants of a neigh-
 g city, upon a provocation of one individ-
 and for which he offered to make the full-
 eparation in his power — a murder com-
 d with many circumstances of disgrace
 ding it; yet Jacob as ruler did not pun-
 em with death, nor did God command
 o to punish them.

ese murderers both lived long, and en-
 the favor of God, and became the fa-

thers of numerous tribes; and the posterity of one of them was afterward chosen by God to minister at his sacred altar, in the possession of which favor, they continued until the close of the Jewish dispensation. Moses was not put to death for slaying the Egyptian, whom he saw smiting the Hebrew; but he was afterward chosen of God as ruler of his people, and the giver of that very code of laws, and that religious system, to which their posterity adhere unto this day.

We have thus shown, from God's own dealing toward men, both before and after the days of Noah, that he never has ordained a law, of permanent and universal obligation, binding men to put their fellow men to death. Indeed, there is some grounds given us in the scriptures, to doubt the *divine* authority of some of the penal institutions of the Jewish code. For example, David says, Ps. lxxxi, 11, 12, "My people would not hearken to my voice, so I gave them up unto their own heart's lust; and they walked in their *own* counsels," Ezekiel xx. "They walked not in my *statutes*, neither kept my judgments, to do them; which if a man do, he shall even

e in them." "Because they had not executed my judgments, but had despised my *statutes* — wherefore I gave them also *statutes that are not good*, and judgments whereby they could not *live*, that I might make them *desolate*." And Jesus told the Jews that Moses wrote them the law of divorce because of the *hardness of their hearts* "—not because it was right. Christ is our lawgiver, and he did not recognize the doctrine of blood for blood, as a vine institution appointed by God, but attributed it to men. "It hath been said by *them of old time*," (not by God in old time) "but *SAY UNTO YOU*, love your enemies, bless them that curse you, do good to them that hate you, and pray for them that despitefully use you, and persecute you, that ye may be the children of (or like) your father in heaven."

Here Jesus has taught the great *moral principle upon which men should act*. He showed that the *retaliatory principle* is wrong — wrong in every case. For if right in one, right in all: if *wrong* in one, *wrong* in *all* cases. And here is the man who has dared to base his advocacy of the gallows upon New Testament authority? Echo answers, "where?" Even

the clumsy efforts to *palliate* the practice by reference to a few passages therein, has made many an honest christian blush.

But as Doctor Cheever's work, on this subject, is the textbook of the gallows men, for the sake of truth and justice, we will look at his remarks on two or three New Testament passages.

Cheever says that this injunction of Christ ("But I say unto you that ye resist not evil, or that ye retaliate not evil") was "not directed against the laws themselves, but to the abuse of them." Now this we think is a manifest error. Had this been the fact, Jesus would have said, "Ye have perverted the saying of them of old time, to justify private revenge;" but it is directly at the *saying* itself that his condemnation is aimed. See in proof of this, his rebuke of the Jews, Matthew xv. 3, 6, for their treatment of the law of filial duty—"Why do ye also transgress the commandment of God by your tradition?" Here he speaks of their "making void the law of God by their *tradition*;" but in the other case he uses no such language, *because* no such

abuse of law," was in his mind ; but the wrong principle involved in the saying itself.

Cheever quotes, to support his views of Genesis ix, Christ's words to Peter, when he drew his sword and smote the servant of the high priest — "Put up thy sword, for all they that take the sword *shall* perish by the sword." We admit that this text is of the same character, and parallel to Genesis ix, and expresses the same "general meaning (as Doctor Clark says), that they who contend in battle, are solely on both sides to become the sacrifices of their mutual animosities." He quotes, also, Lev. xiii, 10, "He that killeth with the sword must be killed with the sword." Is this *command* to kill men with the sword ? Then not *hang* them. But would it not look out as reasonable to contend that Daniel's assertion, "the wicked *shall* do wickedly," is a command to sin — and that "none of the wicked *shall understand*," is a prohibition from receiving the truth ? Surely the citation of such passages to support the gallows, shows their scarcity of testimony.

But, says Mr. Cheever, "Paul recognized the justice of the "*death penalty*," when he

appealed to Ceasar's judgment seat, (Acts xxv, 11), "If I be an offender, or have committed anything worthy of death, I refuse not to die," &c. Who, we ask, believes that Paul meant to assert the righteousness of the whole code of Roman laws? And if he did to any extent admit that it might, under some circumstances, be right to take life; it does not therefore follow that *we must* put men to death, but only that it *might* be done. But we think Paul in these words, meant to express in this strong manner his *innocence* only.

"Another passage on which Mr. C. most relies, is Rom. xiii, 1, 4, wherein Paul enjoins submission to rulers, and speaks of the magistrate as bearing not the sword in vain, but as the minister of God to execute wrath on him that doeth evil. But in all this there is no proof of a command to punish men with death. At most it but asserts the ruler's right to protect the good and punish the evil; and for these purposes to use the needful means of maintaining his authority; leaving the choice of means to his discretion. If, then, he judges it inexpedient to punish with death, believing evil-doing can be more effectually repressed

by milder penalties, here is no prohibition of their use. 'The sword' is the emblem of his power, but it does follow that it *must be* an instrument of penal bloodshed. Even if it were certain, as it is not, that in this text is taught the ruler's *duty* sometimes to take life, it would not prove that he must slay the criminal who is completely in his power, and can otherwise be restrained from doing mischief. It might refer to the use of the sword in subduing armed rebellion, or overcoming forcible resistance to the laws. Most of those who oppose the punishment of death, would probably allow such a use of it to be right, when nothing else would serve. This no more proves the death penalty to be right, than an admission of the right to kill in needful selfdefense would justify the killing of an unarmed and pinioned captive. This passage, therefore, gives the gallows no support."—*Burleigh*.

Although we do not contend that the writings of the New Testament were designed to supersede the necessity of political enactments, yet we contend that there should be no direct conflict between our political principles and our *moral* principles. That the laws of

our political compact should be so framed as to show our deference to the religion which we as a people profess to believe divine. That our statutory laws should conform to our principles of morality and religion, and not have to make our religious principles bow to our statutory laws, or stand in hostile array against each other. And I am satisfied that no Christian can reconcile the *principle* and practice of capital punishment with the sentiments and precepts of Him "who spake as never man spake," and who condemned the sayings and principles of those of old time who said "Thou shalt love thy neighbor and hate thine enemy." "But I say unto you, love your enemies, bless them that curse you, do good to them that hate you, and pray for them that despitefully use you, and persecute you." Who gave us this broad precept—"whatsoever ye would that men should do to you, do ye even so to them;" and who told us that "this is the *law* and the prophets"—that is, the laws enjoined by God, and his prophets required it.

Christ taught the doctrine of mercy and forgiveness—not for one or two wrongs, but perpetually, for all wrongs. When Peter ask-

ed him relative to the Jewish practice of forgiving seven times, Matth. xviii, 21, 22, "Jesus saith unto him, I say not unto thee, until seven times ; but, until seventy times seven"—or continually. "Bless, and curse not," is his precept. These precepts and the spirit they breathe, are applicable as guiding principles, though not as specific rules, to men of all conditions and callings, whether in public or private, who venerate the christian religion, and acknowledge the supremacy of the moral law.

We deny that "there exists two different codes of moral and religious principles ; one for the guidance of political confederacies and public officers ; the other for private citizens. Individuals of every class and description must, in all cases, submit to the same code. In all moral points of view, the government is related to every citizen, and every citizen to it, and to one another, and each must act in accordance with that relation, or violate their duty. And this rule of moral duty is as applicable to acts of public punishment, as to those of any other kind. If this were not the case, how many persons must be associated in political compact, before the precept of Christ or

the morality of the gospel would be binding on them; ten, twenty, or ten thousand?

Without insisting on our receiving the precepts of Jesus in so literal a manner as to imply entire "nonresistance," yet I think they will bear such an exposition and practical application as this: "When you are in contest with an enemy, respecting your own personal interest and welfare, the interest and welfare of your family and friends, or of the community in which you live, use toward him no unnecessary violence. Act on the *defensive*, as long as you can do so consistently with the safety of yourself and those in whose behalf you are contending."

"If you can, unharmed and without peril, attain your end without it, do your adversary no personal injury, especially no deep or dangerous one. Should it become necessary to the attainment of your purpose, disarm, but do not seriously maim him. Subdue and bind him, deprive him of the power to do mischief, but do not kill him. Let the taking away of his life be the last and only hindrance you can oppose to his evil designs, and then if you must, strike the fatal blow—but not sooner

strike it. Thus far, if no farther, we think all will agree, Christian morality requires we shall go. And if this be admitted, then we have proved the incompatibility of capital punishment with christian duty. And that the primitive christians believed it incompatible, is evident from their early history.*

Of the Emperor Julian it says, "He would not allow Christians to be prefects, as their laws prohibited their adjudging capital punishments."

Do not our own statutory laws regard the same principle? If you are attacked by a felon, and you succeed in defending yourself and in binding and securing him; if then, you proceed to take his life, the law would regard you as a *murderer*, and treat you accordingly. And why? Because the act would indicate "*malice prepeuse*." Would it not be well to examine carefully, then, whether the same malice is not exhibited in the conduct of the State, when it takes the life of the chained captive, who is now secured, and whom we have means to keep in perpetual security?

And if on examination it should appear that

* See Milman's History of Christianity.

we do possess the means of perpetual security, and yet the State takes the life of the criminal, is not the State guilty of murder too? We confess we cannot see why its action is no murder. For the case of the convict is stronger one than that of the felon just described. He is captured, imprisoned, disarmed and incapable of further criminal acts, and may be so kept. The public has full possession and control of him. And while he is feeble and destitute of everything, the State is powerful, full of means and resources, for its own security, and his improvement. And now to murder him, would be like the eagle darting upon the wren, or the lion springing upon the kid.

To the high-souled philanthropist, the humane spectator, the charity-warmed christian the poor outcast is much more an object of compassion and kindness, than of resentment and persecution.

"Would you not punish the criminal?" asks the reader. Yes! But the punishment should be just and benevolent in its infliction. Indeed, these principles must compose the infliction, or it is not punishment at all, but mere

vindictiveness, cruelty, or revenge. Punishment, says several eminent writers, "should not be retrospective, but prospective."

No criminal should be punished for what he has been, or what he has done, unless by the infliction of the punishment his future life is designed to be amended, or the evil he has done, remedied." Without this, the infliction is purely vindictive. Inflictions should not be corporeal; these only degrade and irritate the sufferer, harden his heart, and excite him to desire escape and revenge.

The principle is well established, that nothing is just which involves unrighteousness; and that no act is just which violates the rights of man, which we have declared to be "*inalienable*." We have shown that public justice embraces the rights of every individual of the political confederacy, and that the criminal is a member, notwithstanding his violation of the law. We have shown that it is the design and result of every action, public or private, which gives it character, or constitutes it good or evil. That for an action to be just and right, it must seek the good or happiness of those upon whom the action is to have

an effect. That the death penalty is not designed to benefit the criminal is clear, therefore that it is unjust to him is equally clear; for *justice* or righteousness toward him consists in correcting him in such a manner as will set him right, or lead him to righteousness. We have shown, also, that it violates the rights which others have vested in him, in his various relations of life.

We say that it is unjust to society at large; for justice to society requires that the best method to preserve it against crime should be adopted; and we have fully shown from its results, that capital punishment is not the best — therefore it is unjust to society at large, as well as to those more immediately connected with the criminal. On the contrary, we say that while it terminates the career of the criminal who suffers, we have but too much reason to believe it is instrumental in instigating others to commit the same crime (as examples furnished in the former part of this work clearly show). Society is therefore injured by it, and the State is unjust in the infliction of the injury upon society, and ought to abandon the practice, and to adopt a more salutary discipline.

WHAT DISCIPLINE WOULD YOU ADOPT?

A just one ! One which will illustrate and force the principle of righteousness, in the law of the world, and on the mind of the criminal. How can this be done, is an important inquiry. We submit the following plan to the consideration of the reader.

Place the convict in the penitentiary, and there compel him to work diligently a reasonable portion of time every day, when able; clothe and feed him comfortably, but plainly. Take from the State so much of the product of his labor as will pay the State's expenses of maintaining him; divide the balance of his earnings between the family of the murdered man (if he have a family, or dependent friends, who are deprived thereof by his death) and his own family or dependent friends, who are deprived of his assistance by his imprisonment. If he has no such connections, let a portion of his labor go to the injured, and lay up for himself the remainder, that when he is prepared for freedom (if he ever becomes thus pre-

pared), he may have some of his own ^{earned} means to live upon ; that he may not be turned out upon the cold and unforgiving world without means, and from the very destitution in which he finds himself, be induced to further crime, and feel himself in some degree justified therein, from the conviction that the community have robbed him.) If malice had induced the murder which he had committed, although enmity might still rankle in his bosom, yet this punishment arising from the distribution of his labor, would enforce upon his mind the principle of justice ! And if he should become repentant, it would be a source of just pleasure to him to know, that he was not deprived by the State from rendering that aid to the wronged which was still left in his power. Should he never become prepared for liberty, let the whole of his earnings, after the expenses of the State are paid, go to the injured, if any ; if none, let it be given to the general school fund for the education of society.)

This system of distributing the proceeds of his labor, would so far as is practicable, consistent with the public security, afford him the opportunity of discharging his duty to his fam-

and friends ; it would not compel him to
 atë all his moral and social duties to soci-
 because he had violated one. The State
 d not then compel him to sin against
 e relative duties which, in some instances
 east, he might feel disposed to perform.
 some murderers have been indulgent and
 stritious parents, but whose uncontrolled
 ions induced the horrid crime. To restore
 men to usefulness and duty, is an object
 hy the effort of a wise and just govern-
 t ; and we believe that all that is neces-
 to accomplish this desirable result, is to
 ghten their minds by a system of good
 al culture ; to soften their hearts by kind-
 and compassion ; to give them the con-
 of their passions by bringing them away
 the association of the vicious, and asso-
 ng them with persons of higher moral
 re, whose influence shall lead them to re-
 ation and virtue. But this can never be
 e under the present system of prison disci-
 e, and unrighteous disposition of the pro-
 s of their labor.
 or where is the man, however degraded in
 ie, who does not still retain some regard

for his own rights at least, and who can know and feel deeply the injustice of being compelled to labor hard for the benefit of those with whom he has no sympathy, and to whom he sustains no other relation than that of slave and master. While every stroke of the whip brings with it the painful conviction, that it is neither for the benefit of those to whom he is allied by ties of kindred affection, nor for the benefit of the State, whose protection he is entitled to share ; but only for the interest of the speculator, who grows rich and powerful from the product of his toil. Who, I ask, can expect anything but hate and thoughts of revenge to find a place in the bosom of the colored man?

I confess that I rather respect the spirit of justice, in the human soul, than the spirit of the oppressed convict against his oppressors, and prevents his *tamely* submitting to his servile degradation to the condition of so debasing a servitude.

From one improper extreme, we have passed to another. A few years since, our prison discipline was so lax, and inefficient, as to involve the State in an annual debt, to n

s penitentiary. To prevent this, the present system has been adopted ; *dime saving* being the *Geni* that presided over the spirit of the great reform ; and “*brute force*,” the only efficient mode of extracting the needful from the oiling slaves of crime, and the speculator ; leaving out of view entirely, the only legitimate object of a prison—the protection of society and the reformation of the vicious. But a palliation of this erroneous policy let me say, that it was adopted before the science of Anthropology was as well-defined and understood as now. And also, that it is not always the case, that the wisest heads or warmest hearts compose our councils of legislation ; but sometimes those who can best adapt themselves to the spirit of craft and chicanery, by which success is made more certain, than by qualification and merit.

While the better qualified are frequently so circumstanced as to put it out of their power, or beyond their reach, to become our lawmakers. And we rejoice to know that these circumstances are swiftly passing away ; and we have reason to hope that a more enlightened policy will soon be adopted ; one more in har-

mony with the enlightened reforms of the day. We see dawnings of this reform already; the establishment of moral and religious teaching during the recesses of labor, furnishing them with books and light to read, are steps marking the progress of truth in relation to the nature of man, and the means by which rational intelligent beings can be led to duty, and be governed securely.

But before our desires can be realized, there must be a general application of these principles of man's nature, not in theory only, but practically in the management of our prisoners; indeed those places should lose the commonly received character of prisons, and assume the character of "bettering houses," or places of security and reformation, where the unfortunately vitiated member of society, may be sheltered from the temptations to crime, which some, from their very organization, are less able to resist than others; and where, by the manifestation of kindness and compassion, they may learn that the object of their fellow men is not their destruction, but restoration. To effect this, a thorough revision of our penal code must take place. Our penal laws, as

well as our people, must have forgiving mercy. Not the power to defend the guilty against the operation of a just law ; not authority vested in a governor to pardon the guilty out of prison – but to forgive and restore to society those who are reformed and prepared to enjoy liberty, being reconciled to the law, and the community who govern by it.

While we utterly deny the right of men to take the life of man in any case, we also deny the right and justice of the law which sets the definite limit to the confinement of men for crimes committed against the peace of the Commonwealth. Justice to the criminal requires that he should be defended by the State against the commission of crime as far as is practicable, and also against persecution or retaliation for his wrongs committed. And therefore the law should be so framed as to throw around the criminal the best security against himself, as well as others. Justice to the public security requires that the dangerous member should be secured from doing violence to society. Neither of these great objects of law are secured by the present penal code.

The doctrine of our present system is, so much "punishment," or rather infliction or misery, for so much crime ; and after that has been endured, turn him loose to afflict community or be afflicted by it, without any reference whatever to the security of either, from the effect which has been made upon the prisoner's mind while in confinement.

As already shown, the object of all punishment is the good of the sufferer. So much confinement and disciplinary correction as will reform him, is just and right to all parties interested ; and more is oppression and tyranny ; and less is abortive of its object ; the measure then, that is just, must be determined by its effect upon the punished ; and not pound for pound, as the demand of a Shylock.

Here it will be objected that however plausible this may look in theory, you cannot carry it into practice ; for lay this hope of release before the vicious, and they will soon feign repentance and profess reformation, when in fact they are as vicious as ever. That may be very true ; they may attempt to deceive, but are we secure against deception now ? Do not they practice this deceit on the governor ? and add

to the deception the strong entreaty of connections to induce him to pardon them out of prison? Then why is the present policy preferable to that proposed? It is not! For now, they have a better opportunity to deceive, than they would if our plan was adopted.

We do not propose to leave it to the decision of the warden, or the governor of the state, to say whether the man shall be set at liberty or not! We propose that there shall be appointed an examining court, connected with the prison law, composed of the most competent physiologists, and men of the first order in science and morals, who shall examine into the circumstances of the prisoner whose liberation is sought. And if the opinion of that court shall be unanimous, after the most careful examination of his case, that it is safe to release him, it shall be done; if not, he shall be retained until they are satisfied that it is safe. In order to the reformation of the prisoners, as already suggested, we would lay aside all corporeal punishments. We would employ no man as warden, or guard, who is not of the highest order in virtue, and moral qualifications as a teacher and governor.

Then, the withdrawal of the criminal from his associates in crime, and his association with his governors and instructors, in all his intercourse with men in the prison, would tend to restrain at first, and reform by the sympathetic interest such men would take in the restoration of these unfortunate men; until at last most of them could be safely trusted in the intercourse of life again. And most certainly the community should learn to exercise forgiveness, so that when the court of examiners had restored them to liberty and citizenship they would be treated with kindness and encouragement. Then would even the most degraded in crime begin to feel that they were *men* again; and feeling that they might yet be men, and be treated as men, they would soon rise in character and conduct to the dignity of man. But so long as our conduct towards them leads them to think, that, do as they may, we shall ever despise and shun them, there is but little hope that they will nerve themselves to the task of becoming worthy of the privileges of liberty.

And suppose some are so *unfortunately* constituted that it would never be safe to liberate

them; by a proper course of treatment they might be brought to regard themselves, though in prison, as among interested friends, who were seeking their happiness, and be brought to feel comparatively contented and happy; indeed, there have been instances, where men thus treated, have felt more safe and at home, with their keeper and benefactor, than abroad in the world.

But here the objector will say, "however desirable the reformation of the criminal may be, cannot be done. These men cannot be reformed—that has been often tried, but without success." We have already met and refuted this objection, in part, in a former part of this essay—where we showed the reformation of Moses, David, and Saul of Tarsus! And we ask the reader not to decide against this *un-~~tried~~* experiment too hastily; but to look carefully at man as he is (~~not~~ as he is often misrepresented as being), and at the manner in which he is operated upon, as man, in the various intercourse of life, and make up his verdict upon the *facts* in the human character. What is it, which makes the great difference between men's natural dispositions, and

It is the equilibrium, or the want of it, in the strength of men's powers, which constitutes the essential difference in men. And it is upon the suppression, or cultivation of the inclinations or tendencies, that the new equilibrium in men's minds is obtained upon which equilibrium, men's character depends. Can this equilibrium be obtained to any degree secured? is the important question. We assert that it can, to such a degree as most, if not all persons, as to make them the members of society. And the inquirer, philanthropist and legislator should ask, can it be done? We answer: By the simple, certain way, which nature chooses for she has but *one way* to accomplish her purpose. That way she exhibits in her operation to the careful observer of her works. That way is in reforming the criminal is, first to withdraw him from the *circumstances*, which administer stimulus to his over active organs of combat and *destructiveness* in the murderer and in other crimes, the corresponding organs by administering *stimulants* to his moral and his religious faculties: for upon

power depends the improvement of his conduct and character.

This natural doctrine has not been incorporated into our penal legislation yet; and therefore we say, the proper natural means have not been "tried, and have failed," as the objection above supposes. Let it be fairly tested, by removing from our prisons, as far as we can, everything which tends to excite the combative, the retaliative, vindictiveness of the criminal, and as far as possible, let every object, expression, thought, and feeling manifested toward him, there and elsewhere, indicate compassion, rather than hate. Then, from the very fact that he will have nothing which to feed his *hate* or *revenge*, their power will gradually die. And by the influence of kindness and compassion not only excite his love of approbation and other social culties, but these exhibitions toward him from the *law itself*, and the moral power of the essence of noble and high-minded virtuous men, would stimulate all his feeble moral powers to constant action, by which their growth and consequently *power* would lead to his reformation, by exciting his dormant ven-

eration toward both the men who control him, and the measures they employ in his instruction. To do this most effectually, let the convicts, in their hours of respite from labor, be furnished with the means of intellectual, moral, and religious teaching and improvement, by men of the most enlightened views and warmest sympathies for them; that their conscientiousness, veneration, and benevolence, may receive constant excitement therefrom; and not be impeded in their growth from the influence of their "*common sense*," beholding the variance between their *precepts* and their *examples*, in the character of the law, nor in the spirit of its administration.

That these influences would be salutary, there can be no doubt. For it is the principle upon which all our sciences are based — upon which all our most enlightened practices are founded. See, in illustration, the practice of the skillful physician. Is there an improper excitement in any part of the system? he administers medicine to allay that excitement, and to equalize the stimulants to vital energy. Is there a want of it in any part? he administers the to excite to

healthy action, and thereby the patient is cured. If this treatment is wise in the management of physical disease, why not in moral disorders? It will be successful! Try it.

But again, it may be objected, that "even if it would prove successful, we cannot afford the expense of employing such men as you insist upon should be the warden, guards, and instructors, etc. Such men are difficult to find, and still more difficult to hire, at a salary such as the State could afford to pay."

To this we answer, that we admit it would be a more difficult task to select the right kind of men, but we have yet to learn that good men are more mercenary than bad ones. And it remains to be proven, that the expense of such a course would be so very great as the objector supposes. For, in the first place, men treated as mere beasts of burden, or as fit only for labor, will always be seeking escape, and therefore a stronger guard is necessary to prevent it than would be requisite under the paternal system of government.

And in the second place, the criminal would be deeply interested in everything which he was connected with. A portion of his labor

being his own, or for his individual advantage, he would not need to be watched, and driven as a brute ; but would work without so many cruel masters to urge him to his task. And again, the thousands which are most unrighteously given to mere speculators off their penal labors, would be saved toward paying the salaries of the criminal's benefactors.

It would not be long, under the operation of this system, before its economy, even in a monetary view, would be seen. For men once discharged under this system of discipline would seldom return to prison for crime. Having no wrongs from the community to redress, they would not go out to pirate on the world, but to live in it. We think, however, that the saving of a few dimes in such an enterprise, should weigh but little.

Here we rest our remarks on prison reform and discipline. We intended not an essay on abuses, nor a labored disquisition on law reform ; for neither of these tasks are we prepared. We have only attempted to present, in as condensed a form as we were able, the prominent thoughts which by reading and reflection have been presented to our mind. We wished

embody, in as little space as we could, our most prominent objections to the inefficient and barbarous practice of a darker age, to do justice to community, and to every individual imposing it.

We wished to direct the popular mind to the error of the old popular fallacy of "doing evil that good may come." And to wake up the public mind to the duty we all owe to justice and humanity ; that the people, who are the true source of power, may see to it, and provide for themselves and their fellow men greater security, by adopting a course which will result in the promotion of that moral virtue which alone is the strength and security of any people. May these scattered thoughts contribute their share in directing more able minds to this important subject.

W. Y. EMMET.

Cincinnati, Feb. 20th, 1849.



APPENDIX.

THERE are some minds that have so great a relish for satire, and so little for the patient labor of reflective investigation, that we, having a strong desire to produce conviction in the minds of all into whose hands this little work may fall, have deemed it proper to insert the following justly-merited and cutting satire on the Christian (!) practice of hanging men. Although it has gone the rounds of newspaper publication all over the country, its ridicule is still deserved, while the practice it satirizes continues.

It is now inscribed to all the gallows-loving friends of the death penalty — or the “lovers of the fun!” of seeing their fellow mortals murdered according to law!

From the Irish Citizen.

THE GALLOWS GOERS.

BY THOMAS DUNN ENGLISH.

Up, and make ready, ye lovers of fun!
 On with your holiday dress and be gay!
 Now that the Sheriff has work to be done,
 Business with pleasure he mingles to day.
 Some may go hunting with guns; and a few,
 Rods in their hands, little fish may pursue;
 Ours is the sport which is sanctioned by law —
 We go a hanging, a hanging! Hurrah!

Two months ago, on a rare, drunken bout,
 Billy, his comrade, the criminal slew;
 Murder's a deed that is vile, without doubt —
 Ergo — the law will turn murderer too.
 As for the place where the liquor he got —
 Liquor which maddened him — yonder 's the spot —
 Sammy, who keeps it, approves of the law —
 He goes for hanging, for hanging! Hurrah!

Bright shines the sun on the place where you see
 Yonder tall gallows, substantial and bare;
 Wait a few hours, and a fellow will be
 Dancing fandangoes of fun in the air.
 Gathered in groups at the gallows, behold
 Parents and children, maids, wives, young and old,
 Waiting the time when the halter shall draw —
 They go for hanging, for hanging! Hurrah!

Pickpockets plenty are — mark how they go
 Slyly and coolly to work at their trade.
 Business is business, and people must know
Too much attention to that can't be paid,
 Swearing, and fighting, and kicking — the crowd
 Utter their blasphemous curses aloud —
 Righteous example is set by the law;
 Good comes from hanging, from hanging! Hurrah!

Look at the criminal! please ye to look!
 Standing behind him the hangman you see —
 There is the priest with his gown and his book —
 Galloping gaily they go to the tree.
 Thanks to the priest who the hangman befriend,
 Choking such knaves as 't were labor to mend.
 Hanging they say is *Levitical* law —
 Cheers for the clergy—they're *Christians*! Hurrah!

Firmly and proudly the culprit looks round,
 Holding his head with a satisfied air;
 Murmurs applauding go over the ground —
 Down pops the priest with the felon to prayer.
 “How interesting his looks are!” says Ann,
 “Yes,” answers Sall, “and he’ll die like a man!”
 Elegant talk for young maidens, but — pshaw!
 Shout for the hanging, the hanging! Hurrah!

Prayers are all finished, and now for the fun;
 Over his features the cap has been drawn;
Ketch and his comrade, the preacher, get down,
 Crack! goes the whip, and the wagon moves on.
 Wonderful sight for the Christian to see;
 Merrily dancing on nothing is he.
 Though there’s no fiddle a hornpipe to saw,
 Light are his leaps — he’s a hanging! Hurrah!

After the rope has been severed in twain,
 Home go the people and joyfully sing;
 Heaven will receive whom the gallows has slain —
 Does not the clergyman settle the thing?
 Home go the people, and talk of it all,
 Children in nursery, servants in hall;
 Bub hangs the cat in the manner he saw
 Hung at the gallows God’s image! Hurrah!

Rouse, ye good clergymen, servants of God;
 Stand by my side while I fight for your fun;
 Hanging preserves us from shedding of blood —
 Remedy like it ~~there~~ never was one,
 Rally your forces, thump pulpits, and be
 Clerical guards of the good gallows tree;
 What if our Saviour denounces the law?
 You go for hanging, for hanging Hurrah!

WE recommend to all, the exercise of the Christian duty of forgiving mercy, as exercised toward us by the great Father of mercies. Then may we kneel in the prayer of "*Forgive us, as we forgive.*" This we cannot do while we, with *unforgiving* cruelty and revenge, pursue the murderer to destruction.

FORGIVE AND FORGET.

BY MARTIN F. TUPPER.

When streams of unkindness, as bitter as gall,
 Bubble up from the heart to the tongue,
 And Meekness is writhing in torment and thrall,
 By the hands of Ingratitude wrung —

•

In the heat of injustice, unwept and unfair,
 While the anguish is festering yet,
 None, none but an angel of God can declare
 "I now can forgive and forget!"

But, if the bad spirit is chased from the heart,
 And the lips are in penitence steeped,
 With the wrong so repented the wrath will depart,
 Though scorn on injustice are heaped;
 For the best compensation is paid for all ill,
 When the cheek with contrition is wet,
 And every one feels it is possible still,
 At once to forgive and forget.

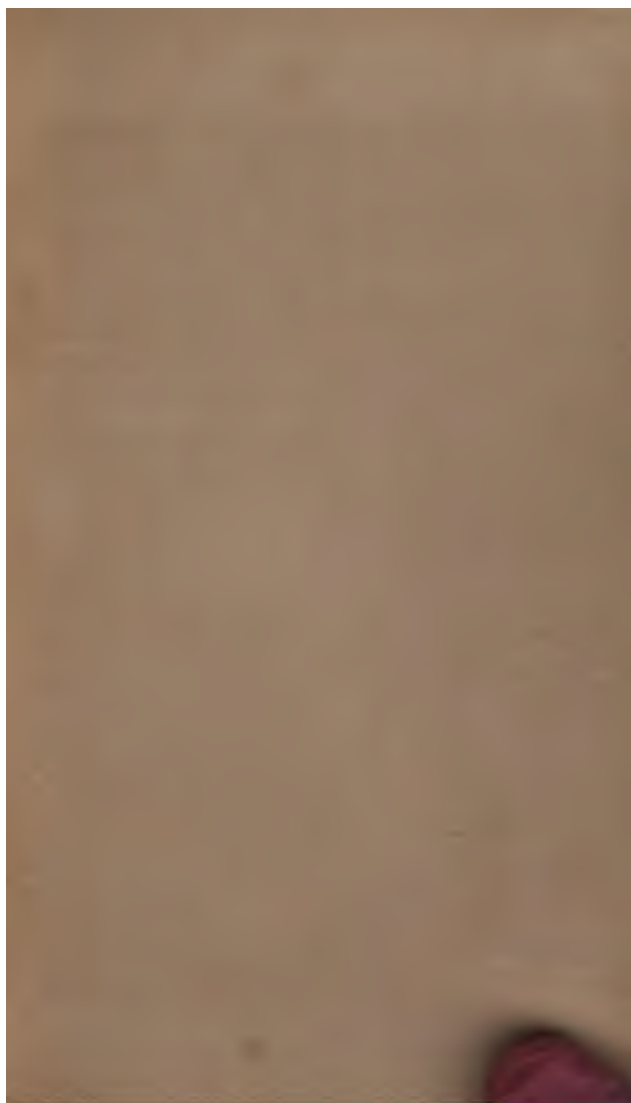
To forget? It is hard for a man with a mind,
 However his heart may forgive,
 To blot out all perils and dangers behind,
 And but for the future to live;
 Then how shall it be? for at every turn
 Recollection the spirit will fret,
 And the ashes of injury smolder and burn,
 Though we strive to forgive and forget.

Oh, hearken! my tongue shall the riddle unseal,
 And mind shall be partner with heart,
 While thee to thyself I bid conscience reveal,
 And show thee how evil thou art;

Remember thy follies, thy sins, and — thy crimes,
 How vast is that infinite debt!
 Yet Mercy hath seven by seventy times
 Been swift to forgive and forget.

Brood not on insults or injuries old,
 For thou art injurious too —
 Count not the sum 'till the total is told,
 For thou art unkind and untrue ;
 And if all thy harms are forgotten, forgiven,
 Now mercy with justice is met,
 Oh, who would not gladly take lessons of heaven,
 Nor learn to forgive and forget !

Yes, yes, let a man, when his enemy weeps,
 Be quick to receive him a friend ;
 For thus on his head in kindness he heaps
 Hot coals to refine and amend ;
 And hearts that are Christian more eagerly yearn,
 As a nurse on her innocent pet,
 Over ~~sins~~ that, once bitter, to penitence turn,
 And whisper, forgive and forget.





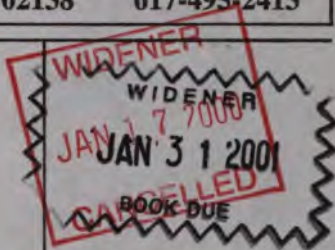




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